

**PERFORMANCE AUDIT OF
INDIGENT DEFENSE SERVICES
Recommendations Follow-up**

INSTRUCTIONS: Please check the appropriate box under "Implementation Status". Also supply other information as relevant. Please return the completed worksheet and supporting documentation by **JANUARY 18, 2008**, to **Tim.Hoegemeyer@ncauditor.net** or mail to Tim Hoegemeyer, 20601 Mail Service Center, Raleigh, NC 27699-0601.

RECOMMENDATION	IMPLEMENTATION STATUS Please provide documentation supporting implementation status for each recommendation.
<p>1. ATTORNEY SELECTION AND APPOINTMENT PROCEDURES DO NOT ENSURE ADEQUATE INDEPENDENCE.</p> <p>The Office of Indigent Defense Services should propose legislation to gain appointment authority for public defenders or propose some other authority that 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.</p>	<p> <input type="checkbox"/> Fully implemented <input checked="" type="checkbox"/> Partially implemented 10% complete (Explain below) <input type="checkbox"/> Not implemented (Explain below) </p> <p><u>During the 2007 legislative session, IDS asked the Legislature to transfer appointment authority for the Chief Public Defenders from the Senior Resident Superior Court Judges to the IDS Commission. A bill was introduced that would have accomplished that transfer (SB 660), but it was not reported favorably out of committee. IDS will continue to ask the Legislature to provide for a more appropriate and effective management and supervisory relationship between IDS and the Chief Public Defenders.</u></p> <p><u>In public defender districts, since its establishment in 2001, IDS has asked the public defenders to assume responsibility for and oversight of the local indigent lists and the appointments that are made pursuant to those lists. In non-public defender districts, IDS currently does not have the staff or resources to monitor judicial overrides of the attorney appointment lists.</u></p> <p><u>In all public defender districts except Durham County, local indigent committees are established and operating pursuant to the local appointment plan. In Durham County, the plan does not require a local committee. In non-public defender districts, IDS has not yet taken direct steps to ensure that the local committees are established and operating in accordance with the local plan. However, after the February 2007 audit report was released, the IDS Commission formed an Indigent Appointment Plan Committee that is developing a model appointment plan for non-public defender districts. Once that model plan is complete, we intend to circulate it to all of the non-public defender districts and to ask them to adopt some version of the model plan and revitalize their local committee if necessary.</u></p> <p><u>As explained in our response to the February 2007 audit report, IDS is not currently in a position to discontinue judicial approval of attorney fee applications. However, we are working to develop a system for electronic submission of fee applications. (See Implementation Status for #4, below.) Once such a system is developed, it may be more possible to minimize the role that judges currently play in setting fees.</u></p>

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<p>2. ATTORNEY SELECTION AND PERFORMANCE ARE NOT ADEQUATELY MONITORED TO ENSURE COMPETENT REPRESENTATION.</p> <p>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.</p>	<p> <input type="checkbox"/> Fully implemented <input checked="" type="checkbox"/> Partially implemented 5% complete (Explain below) <input type="checkbox"/> Not implemented (Explain below) </p> <p><u>As discussed above, the Indigent Appointment Plan Committee of the IDS Commission is developing a model appointment plan for non-public defender districts that will include some qualification standards that attorneys must meet before being added to the various indigent lists. As explained in our response to the February 2007 audit report, IDS' small centralized staff does not have the ability to directly monitor and evaluate the performance of more than 2,700 private attorneys across the State who handle almost 200,000 cases annually, or to respond in a meaningful way to client complaints in all of those cases. As above, after a model appointment plan for non-public defender districts is complete, we hope to work with the local indigent committees to establish and/or improve mechanisms for addressing client complaints.</u></p>
<p>3. ATTORNEY FEE PAYMENTS PROCESS LACKS ADEQUATE CONTROLS.</p> <p>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.</p>	<p> <input type="checkbox"/> Fully implemented <input checked="" type="checkbox"/> Partially implemented 20% complete (Explain below) <input type="checkbox"/> Not implemented (Explain below) </p> <p><u>IDS Financial Services staff has been given access to the automated criminal information system (ACIS) to verify the case numbers and disposition dates that attorneys report on fee applications. While this is not being done in all cases because of the additional staff and resources that such a routine system would require, it is being done whenever there are questions about a fee application and in spot audits.</u></p> <p><u>The responsibility for establishing new vendors and maintaining up-to-date vendor information in the accounting system (NCAS) has been transferred to two staff members in the central IDS Office in Durham who do not process fee applications or enter fee awards into NCAS, which has resolved the segregation of duties problem identified by the auditors. In addition, a staff member in the central IDS Office and a staff member in IDS Financial Services have been assigned to clean up vendor information in NCAS. As part of that effort, those staff members have contacted more than 360 private appointed attorneys around the State.</u></p> <p><u>In May 2007, IDS hired a new Attorney Fee Auditor who is developing and clarifying policies and procedures with respect to attorney fee payments, conducting spot process audits of fee applications, and investigating individual vendor billing at the direction of IDS management. The staff has also begun meeting with various clerk's offices around the State to clarify their</u></p>

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	<p><u>procedures with respect to attorney fee applications; so far, such meetings have been held in Durham, Mecklenburg, Pitt, and Wake counties.</u></p> <p><u>IDS has developed and implemented a system to screen for duplicate payments every time checks are processed and to intercept any suspected duplicates before payment is issued. To aid in the prevention of duplicate payments, IDS has also made efforts to standardize the way that key pieces of data—such as case numbers, disposition dates, client names, and judge names—are entered into NCAS by our Financial Services staff. Since January 2007, we have also collected approximately \$75,000 from attorneys who erroneously received duplicate payments in the past.</u></p>
<p>4. ATTORNEY FEE PAYMENT PROCESS IS INEFFICIENT AND LABOR INTENSIVE.</p> <p>The office of Indigent Defense Services should automate the attorney fee payment process and require attorneys to register for electronic fund transfer.</p> <p>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.</p>	<p> <input type="checkbox"/> Fully implemented <input checked="" type="checkbox"/> Partially implemented 5% complete (Explain below) <input type="checkbox"/> Not implemented (Explain below) </p> <p><u>While IDS has not yet required attorneys to register for electronic payment, we have been encouraging attorneys to take advantage of e-pay and have mailed e-pay forms to approximately 400 attorneys since the audit. The percentage of payments that IDS issues electronically has risen from 21% in fiscal year 2005-06 to 25% so far this fiscal year.</u></p> <p><u>IDS' intent is to develop a pilot system for electronic submission of fee applications in capital cases and appeals, which will ultimately be expanded to include all fee applications in appointed cases. During the 2007 session, the General Assembly appropriated \$175,000 in non-recurring funds to IDS to develop such a pilot system. IDS staff has drafted a work plan for the pilot project, which has been approved by the IDS Commission. The Commission has also formed an ad hoc technology working group to guide the staff on this project. The staff has researched electronic fee application systems that are in place in four other states—Colorado, Massachusetts, Ohio, and South Carolina—and has compiled a chart summarizing the primary components of those systems. Staff members also conducted a site visit to South Carolina to see that state's system and to interview the programmer, developer, and administrative processing staff. The same staff members are planning a site visit to the office of the Federal Defenders of Western North Carolina to see their paperless office system.</u></p> <p><u>The staff has held meetings with a technology consultant, who has provided services to UNC Greensboro Information Technology Services, and with AOC Technology Services Division to begin identifying equipment and software protocols, technical specifications, etc. The staff is now in the process of developing a job description for an Information Technology Manager position to oversee this project, and will soon begin the recruiting and hiring process.</u></p>

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	<p><u>With respect to software development, IDS has contracted with a programmer to restructure the existing Access database that IDS uses to process capital and appellate fee applications in a way that will facilitate on-line fee processing. In addition, the IDS staff has identified the desired features and components of an electronic system, as well as the necessary equipment and software.</u></p>
<p>5. THE OFFICE OF INDIGENT DEFENSE SERVICES LACKS SUFFICIENT RESOURCES.</p> <p>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.</p>	<p> <input type="checkbox"/> Fully implemented <input checked="" type="checkbox"/> Partially implemented 5% complete (Explain below) <input type="checkbox"/> Not implemented (Explain below) </p> <p><u>During the 2007 legislative session, IDS successfully asked the General Assembly to create two new public defender offices—in District 5 (New Hanover County only) and District 29B (Henderson, Polk, and Transylvania counties). Chief Public Defenders have been appointed in both districts and IDS staff members are working with them to get the offices operational.</u></p> <p><u>As discussed above, a Senate Bill that would have transferred appointment authority for the Chief Public Defenders to the IDS Commission was introduced during the last legislative session, but was not reported favorably out of committee.</u></p>