

COMMISSION ON INDIGENT DEFENSE SERVICES REPORT ON PUBLIC DEFENDER CONFLICTS FOR FISCAL YEAR 2024-2025

SUBMITTED TO THE NORTH CAROLINA GENERAL ASSEMBLY
PURSUANT TO S.L. 2013-360, SECTION 18A.6.(B)

The Office of Indigent Defense Services shall report to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by October 1, 2013, and by October 1 of each year thereafter, on (i) the number of conflicts of interest that arose in public defender offices during the prior fiscal year and the cost to the State in private assigned counsel funds to resolve them and (ii) beginning with the report on October 1, 2014, the number of conflicts of interest resolved through the authorization in G.S. 7A-498.7(f1) during the prior fiscal year and the savings to the State in private assigned counsel funds as a result.

I. Relevant Legislative Provisions

This report is prepared pursuant to S.L. 360, § 18A.6.(b), which requires the North Carolina Office of Indigent Defense services to report annually on the following:

1. the number of conflicts of interest that arose in public defender offices during the prior fiscal year and the cost to the State in private assigned counsel funds to resolve them; and
2. the number of conflicts of interest resolved through the authorization in G.S. 7A-498.7(f1) during the prior fiscal year and the savings to the State in private assigned counsel funds as a result.

G.S. 498.7(f1), as amended by S.L. 360, § 18A.6.(a), directs that:

In cases in which a public defender determines that a conflict of interest exists in the office, whenever practical, rather than obtaining private assigned counsel to resolve the conflict, the public defender may request the appointment of an assistant public defender from another office of public defender in the region to resolve the conflict.

II. Ethical Obligations and Assignment Practices

A. Ethical Obligations

Public defender attorneys, like their private counterparts, are bound by the North Carolina State Bar's Rules of Professional Conduct (RPC) to avoid representing clients who have conflicts of interest with other current or former clients. Specifically, RPC 1.16(a)(1) requires an attorney to decline or to withdraw from representation if the representation will result in a violation of law or the Rules.

- RPC 1.7, Conflict of Interest: Current Clients, prohibits representation of a client if it will be directly adverse to another client, with certain limited exceptions.
- RPC 1.9, Duties to Former Clients: disallows representation of another person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of a former client unless the former client provides a written waiver. Matters are substantially related if the lawyer learned of confidential information from the former client that can be used against the former client in the present matter or if facts relevant to the prior matter are relevant and material to present matter.
- RPC 1.10, Imputation of Conflicts of Interest: attributes to the attorney knowledge of any confidential information obtained through the office's prior representation and thus disqualification. If the office gained confidential information from both clients, the office will likely have to forgo representing each of them.
- RPC 1.1, Competence: requires, among other things, thoroughness and preparation for representation.
- RPC 1.3, Diligence: states in Comment 2 that "a lawyer's workload must be controlled so that each matter can be handled competently."

Conflicts and reassignments can also occur for other reasons, such as a breakdown in the attorney-client relationship. Another form of conflict of interest can occur when offices receive influxes of cases or have vacant positions, creating situations where the attorneys' caseloads may exceed their capacity to adequately represent each client according to ethical standards.

B. Assignment Practices

All public defender offices in the state handle adult criminal cases in their respective districts. Some offices also handle other cases in which indigent persons are entitled to counsel, such as abuse, neglect, dependency, and termination of parental rights.

As part of their original design, offices are not expected to accept 100% of cases. This approach serves several purposes, including maintaining a strong and active private bar. In addition, some offices were established with the understanding that they could only manage a portion of the adult criminal caseload in their jurisdictions. For instance, Judicial District 10 was originally, and continues to be, staffed to handle approximately half of the district's adult criminal cases.

Depending on local preferences, some jurisdictions initially assign all cases of the case types that the offices have agreed and are staffed to handle to the public defender. After being assigned, public defender staff check for conflicts. If they find a conflict, they reassign the case to private counsel.

In other districts, judges or clerks preemptively conflict out cases whenever they identify a conflict. In these jurisdictions, the public defender's office may not know about the case and will not enter any data about it in the conflicts database. In either scenario, a judicial official may reassign a case upon request if a conflict arises after initial appointment.

Offices also may reassign cases they might otherwise handle to private assigned counsel (PAC) because it is more efficient to do so. For example, if a defendant or respondent is represented by private counsel on other charges related or unrelated to the present matter, the office may assign the new matter to the same attorney to ensure that, whenever possible, all matters are considered and resolved concurrently. An office may also do this if the defendant or respondent was represented by PAC in the past, taking advantage of an existing attorney-client relationship and possible saving of time in investigation. Sometimes offices will assign cases to PAC whose specialized knowledge or skills afford heightened ability to address certain complex matters.

Historically, public defender offices did not cover each other's conflict cases. Instead, they relied on local private assigned counsel (PAC) to fill the gaps. PAC attorneys who already practiced in the district were available without extra travel costs, and this approach avoided the inefficiency of assigning a small number of cases to an outside office. The 2015 amendment to G.S. 498.7(f1) changed that,

allowing defender offices to handle each other's conflicts when practicable.

IDS does not track how many conflict cases other public defender offices cover. However, chief public defenders report that they rely on this help on a case-by-case basis. The practice is most common in regions where public defender offices are clustered together. For example, chiefs in Districts 1, 2, 3, 4, and 7 report more frequent case-by-case assistance to one another.

Some stakeholders have suggested that public defender expansion will allow neighboring offices to handle each other's conflicts, and, in fact, the Gaston County and Mecklenburg County offices had a longstanding arrangement wherein the Gaston office employed an assistant public defender who was housed in the Mecklenburg office to handle some of the latter's felony conflict cases.

The arrangement, which was discontinued following the appointment of a new Chief Public Defender in Gaston County in July 2023, highlighted several concerns that would have to be addressed before replicating in other offices, including:

- The office providing the conflict counsel must be adequately staffed to meet in district demand.
- The office hosting the conflict counsel must have the ability to strictly partition the work product of the conflict counsel from the other attorneys in the office.
- There must be geographic proximity between two districts.
- There must be a sufficient conflict caseload to justify a full-time conflict counsel position.

Even assuming adequate staffing and sufficient demand, public defenders would need input into the calendaring of the conflict matters to justify the allocation of time and resources to out of district conflict cases.

Nonetheless, the public defender offices do on occasion cover conflicts in a neighboring district.

C. Conflict Tracking

In October 2013, Indigent Defense Services (IDS) updated its online disposition database, enabling public defender offices to more effectively monitor conflicts and cases assigned outside their jurisdictions.

In late 2023, this tracking system malfunctioned, prompting IDS to develop a new system for tracking dispositions and conflicts, which is discussed in greater detail in Section III.C. While the timing of the breakdown was challenging, the system was outdated, and IDS had already been considering its replacement. The failure ultimately created an opportunity to modernize the process and implement improvements within the website-based conflict reporting system. It is important to note that public defender offices often lack awareness

of conflict assignments made directly from the courtroom.

III. FY 2024-25 Conflict of Interest and Assignments to Private Counsel

A. Assignments to Private Counsel

In FY 2024-25, public defender offices reported a total of 45,000 cases reassigned to private counsel due to case conflicts, workload conflicts, and other non-conflict reasons. Specifically, offices reported:

- See Appendix A, Cases Assigned/Reassigned to PAC and MAC FY2024-25.

B. Assignments to Other Public Defender Offices

In prior years, interoffice transfers were primarily used to secure coverage when local counsel was unavailable rather than as a cost-saving measure. Aside from conflict units embedded within offices, there is little evidence that having public defender offices cover conflicts from other districts is cost-effective. While there may be some benefit to allowing public defender offices to support adjacent districts, the expense of sending an attorney to another district for a single case often outweighs the cost of assigning local PAC. Nonetheless, if PAC is entirely unavailable, PD offices will cover conflicts for neighboring districts. Most PD offices cover conflicts.

C. Conflict Tracking

During FY 2024–2025, public defender offices reported their conflicts through a new web-based platform. This system was designed to replace the online database originally implemented in 2013. The transition to the new platform marked a significant procedural change, requiring an adjustment period for offices.

The conflicts website records cases that are:

- Reassigned to PAC/MAC due to conflicts or other practical considerations;
or
- Transferred to other public defender offices.

It is important to note that website entries may not always align with the official court record. In many instances, offices are not immediately aware when conflict assignments are made directly in the courtroom. Moreover, because conflict tracking is a manual process, the data is inherently subject to human error.

D. Data Usage

The data collected through the disposition and conflict reporting system are self-reported by public defender offices and therefore subject to human error. In addition, some cases are not assigned to public defender offices at all but are instead preemptively conflicted out by judges or clerks, meaning they are not fully captured in the system. Given these limitations, IDS treats the accuracy of these data with caution and restricts their use primarily to internal reference. Nonetheless, IDS continues to collect these data because, even with their

limitations, they provide valuable insight into trends, patterns, and office-level challenges that may not be evident in other datasets. For purposes such as financial assessments, budget requests, workload analyses, consideration of potential rate increases, and staffing adjustments, IDS relies on alternative and more comprehensive data sources.

E. Limitations

Conflict reporting within the indigent defense system is subject to several challenges that affect both accuracy and consistency. One issue arises when clerks or judges preemptively conflict a case from a Public Defender office to a PAC or MAC attorney. Ideally, the PD Office should receive all initial case assignments and serve as the sole decision-maker regarding conflicts. When this process is circumvented, it limits the PD Office's ability to document and report conflicts accurately and uniformly.

Another complication stems from the recent rollout of eCourts in a number of counties. This transition disrupted how PD offices manage their internal processes. As offices adjust to new systems and workflows, inconsistencies in how conflicts are reported are likely to occur. These disruptions further complicate the reliability of data and have a direct effect on the statewide conflict reporting system.

To improve accuracy, IDS has sought to rely on the official court record as the basis for tracking and reporting conflicts. However, an initial review revealed significant issues with these records—most notably with the *Attorney Type* field. The data in this field is unreliable.

Table 1 illustrates the extent of these inaccuracies. For example, in Wake and Durham Counties, 98% and 89% of cases, respectively, are recorded as *Retained/Self-Represented*. Similarly, Lee and Moore Counties show cases assigned to a public defender office, which is implausible given that neither county has one. These patterns are inconsistent with expectations and undermine the validity of the Annual Conflict Report. IDS's review indicates that the problem originates within the eCourts system itself rather than within local public defender offices.

Table 1

Track	County	Case Count	Retained/Self (%)	PD Office (%)	PAC (%)
1	Wake	85,138	97.69	1.6	0.71
1	Johnston	43,808	77.76	3.04	19.2
8	Pitt	3,413	96.54	3.16	0.29
4	Guilford	47,295	85.15	4.48	10.36
5	Transylvania	2,310	65.93	18.14	15.93
6	Cumberland	20,522	73.55	16.76	9.69
8	Wilson	1,955	41.79	0	58.21
1	Lee	13,004	55.74	0.5	43.76
6	Moore	6,464	55.49	0.22	44.29
7	New Hanover	11,259	92.81	3.19	4
7	Pender	2,782	92.13	6	1.87
4	Durham	12,373	88.78	9.22	2
2	Mecklenburg	77,273	97.21	2.63	0.16

IDS has made AOC aware of this issue. Until these errors are corrected, IDS's ability to depend on official court records for conflict monitoring remains limited. This reduces transparency, disrupts consistency in reporting, and complicates statewide oversight. Ensuring the accuracy of eCourts data entry and classification is therefore essential for conflict reporting to reflect the true scope of case assignments across counties accurately.

Appendix A

Cases reassigned to private counsel FY2024-25

Public Defender District	Fiscal Year	Total Conflicts	Total Dispositions
01: Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2025	153	1,442
02: Beaufort, Hyde, Martin, Tyrrell, Washington	2025	1,073	1,264
03: Pitt	2025	2,068	3,019
04: Carteret, Craven, Pamlico	2025	884	1,230
05: Duplin, Jones, Sampson	2025	485	716
06: New Hanover, Pender*	2025	777	5,613
07: Bertie, Halifax, Hertford, Northampton	2025	604	712
10: Wake	2025	7,233	7,232
13: Johnston†	2025	1,175	1,024
14: Cumberland‡	2025	1,119	3,703
15: Bladen, Brunswick, Columbus	2025	2,854	3,051
16: Durham	2025	921	8,408
17: Alamance	2025	2,268	3,511
18: Chatham, Orange	2025	567	1,813
20: Robeson*	2025	3,274	1,338
21: Hoke, Scotland*	2025	163	1,199
24: Guilford	2025	5,002	8,792
26: Mecklenburg	2025	5,823	15,917
30: Union	2025	339	1,489
31: Forsyth	2025	233	5,123
32: Alexander, Iredell	2025	120	1,636
38: Gaston	2025	152	1,808
39: Cleveland, Lincoln	2025	362	3,223
40: Buncombe‡	2025	1,277	2,049
41: McDowell, Rutherford	2025	77	3,446
42: Henderson, Polk, Transylvania	2025	1,827	1,780
43: Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	2025	4,170	3,233
Total:	--	45,000	93,771

Notes:

*New Chief Public Defender appointed in FY2024-25.

†New office; started reporting in October 2024.

‡Data may be affected by eCourts rollout.