



**OFFICE OF INDIGENT DEFENSE SERVICES
REPORT ON PUBLIC DEFENDER CONFLICTS FOR FISCAL YEAR 2016-17**

Submitted Pursuant to S.L. 2013-360, Section 18A.6.(b)

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I. RELEVANT LEGISLATIVE PROVISIONS

As part of its responsibility conferred by G.S. 7A-498.3 to establish, supervise, and maintain a system for providing legal representation and related services for indigents entitled to counsel, the Office of Defense Services (IDS) oversees 16 public defender offices covering 17 judicial districts and 31 counties in the state. Beginning in FY 2013-14, 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.

This report is prepared pursuant to S.L. 360, § 18A.6.(b), which requires the following:

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 October 1, 2014, report, 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.

II. BACKGROUND

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. Likewise, in instances where public defender offices encounter witnesses, victims, or co-defendants whom the offices have previously represented, 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 (a) the lawyer for whom disqualification is sought received confidential information from the former client that can be used against the former client in the subsequent representation of a party adverse to the client, or (b) facts relevant to the prior representation are relevant and material to the subsequent representation.

Assuming the current case is not the same as or substantially related to the previous matter, the attorney still must determine whether confidential information was conveyed by the former client, and RPC 1.10, Imputation of Conflicts of Interest: General Rule, 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.

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. RPC 1.1 requires attorneys' competence, which encompasses their allocating the necessary thoroughness and preparation for representation in addition to knowledge and skill. Likewise, RPC 1.3 mandates diligence, and Comment [2] to this RPC explicitly states that "a lawyer's work load 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.

B. ASSIGNMENT PRACTICES

All public defender offices in the state handle adult criminal cases in their respective districts, including misdemeanors, felonies, and probation violations. Some offices have additionally undertaken assignments for other cases in which indigent persons are entitled to counsel, mainly including juvenile delinquency; abuse, neglect, dependency and termination of parental rights; involuntary commitment and guardianship; and child support contempt. It should be noted that some offices have not been staffed to handle and are thus not expected to take all the non-conflict cases that arise in their jurisdictions; for example, when the office in Judicial District 10 was created, it was staffed to accommodate around half of the adult criminal cases in the district and has been maintained at that level ever since. Depending on local preferences, in some jurisdictions public defender offices are assigned all cases the offices have agreed and are staffed to handle and then reassign to private counsel those cases they cannot keep due to conflicts of interest. In other districts, judges or clerks who spot evident conflicts will assign other counsel as the cases arise and will reassign cases upon request of the offices if conflicts become apparent after initial appointments have been made.

Aside from conflicts as described above, cases that offices might otherwise handle may be assigned to contractors or to private assigned counsel (PAC) for purposes of efficiency and for facilitation of effective attorney-client relationships. For example, if a defendant or respondent is represented by private counsel on other charges related or unrelated to the instant offense, the new case may be assigned to that attorney in order to ensure that all matters are considered and resolved concurrently to the extent possible. Similarly, if a defendant or respondent was represented by private counsel in the past, it may make sense to assign that attorney to any future charges that the attorney can handle to save time in investigating the client's background and to take advantage of the relationship that has already been built. For example, a private attorney who represented a client on other charges will not have to spend as much time as a new public defender attorney in learning the client's background, criminal history, or other relevant information in undertaking representation on subsequent charges. Additionally, sometimes offices will assign cases to PAC

whose specialized knowledge or skills afford heightened ability to address certain complex matters.

Until passage of the provision directing them to do so when practicable, public defender offices have not typically covered each other's conflict cases, relying instead on local private counsel to fill in the gaps. This has been the practice largely because private counsel already practicing in a district are readily available and do not incur further costs of travel or encounter inefficiencies created by handling a small number of cases in a county or district. Moreover, private counsel may not face the same kinds of workload issues as full-time public defender attorneys and may be more easily able to absorb the added cases. In contrast, district attorney offices have occasionally handled conflict cases from their peer offices; however, such instances are rare because district attorneys do not represent individual clients and thus do not face the same number of ethical conflicts. Furthermore, unlike public defender offices, district attorney offices do not maintain rosters of private prosecutors to whom they can easily transfer responsibilities for representation. On the few occasions where conflicts have occurred, the Attorney General has generally undertaken the special representation. For example, in 2013 the Attorney General undertook the prosecution of a police officer who shot a man in Charlotte because the District Attorney wanted to avoid any appearance of impropriety arising from the fact that his former law firm was representing the officer. *See NC attorney general to handle police shooting case*, Salisbury Post, Sept. 20, 2013, available at <http://www.salisburypost.com/2013/09/20/nc-attorney-general-to-handle-police-shooting-case>.

There is one exception to the general rule that North Carolina public defender offices have not historically covered each other's conflicts: the Gaston County and Mecklenburg County offices have a longstanding arrangement wherein the Gaston office employs an assistant public defender who is housed in the Mecklenburg office to handle some of the latter's felony conflict cases. (It should be noted that the Gaston conflict attorney left the office in 2016 and, after a three-month gap, was replaced in early 2017 by another attorney to continue handling Mecklenburg conflict cases.) This arrangement requires strict partition between the work product of that attorney and the rest of the Mecklenburg office, including dedicated support staff and firewalls for electronic data, in order to prevent disclosure of confidential information. This type of arrangement could be replicated in other offices, but it would work best in circumstances such as that with Gaston and Mecklenburg where the offices are in close enough proximity to allow supervision of the conflict attorney by his or her employing office, where the caseloads are sufficient to provide for full-time conflict work, and where resources allow for adequate sequestration.

C. CONFLICT TRACKING

Prior to FY14, offices did not track conflict cases consistently or uniformly. However, in October 2013, IDS revised its online disposition database to give offices the ability to track, using clearly defined terms, cases they assign out of their offices. Offices now enter by case type the numbers of cases in which they reassign cases to private counsel because of case-specific conflicts or workload conflicts, or, as described above, for other practical reasons. They also record cases that they transfer to other public defender offices. It should be noted, however, that where conflict assignments are made from the courtroom, sometimes offices receive information about the

appointments, but often they do not, and this information thus may not be reflected in the offices' reporting. An example of the data entry screen is shown below.

IDS Administrative Login Account for District 26 | Exports & Reports | Attorneys | Change Password | Help | Sign out

Case Disposition Data for **Farmout** County **Mecklenburg** Period **Nov 2013**

There is no data entered yet for the Nov 2013 time period for farmout cases in Mecklenburg county.

	Disposition	Withdrawal	Case Specific Conflict	Workload Conflict	Non-Conflict Farmout	Transferred To Other PD Office
District Court Criminal						
District Court Juvenile						
District Court Civil						
Superior Court						
First Degree Murder						
Appellate Court						
Innocence Inquiry Commission						
Felony A	0	0	0	0	0	0
Felony B1	0	0	0	0	0	0
Felony B2	0	0	0	0	0	0
Felony C	0	0	0	0	0	0
Felony D	0	0	0	0	0	0
Felony E	0	0	0	0	0	0
Felony F	0	0	0	0	0	0
Felony G	0	0	0	0	0	0
Felony H	0	0	0	0	0	0
Felony I	0	0	0	0	0	0
Felony Prob Violation	0	0	0	0	0	0
Fugitive Extradition	0	0	0	0	0	0
DWI	0	0	0	0	0	0
Misdemeanor Non-traffic	0	0	0	0	0	0
Other Traffic	0	0	0	0	0	0
Criminal Contempt	0	0	0	0	0	0
Non-Felony Prob Violation	0	0	0	0	0	0
MAR	0	0	0	0	0	0
Other	0	0	0	0	0	0
Drug Tr. Court Session						

Local intranet |

III. FY 2016-17 CONFLICTS OF INTEREST AND ASSIGNMENTS TO PRIVATE COUNSEL

In FY 2016-17, public defender offices reported a total of 35,152 cases reassigned to private counsel due to case conflicts, workload conflicts, and other non-conflict reasons. Specifically, offices assigned out 16,660 case-specific conflict cases, 9,340 workload conflict cases, and 9,152 non-conflict cases. Tables showing breakdowns of the numbers of cases assigned by type of case, court of jurisdiction at the time of assignment, and reason for reassignment can be found in Appendix A.

Because the specific cases the offices reassigned cannot be identified, conveying actual cost information is not possible. Further, although the offices tracked the type and class of each case, neither the ultimate court of jurisdiction at the time of disposition nor the method of disposition for the cases are known because the public defender offices do not have that information. As such, it would be very difficult to assess average costs for those cases absent further detail, in that a felony disposed in superior court typically involves more time and money than one that is resolved in district court; likewise, a disposition resulting from a jury trial is more time-consuming and costly than one resolved by a guilty plea or a dismissal.

With all that said, an extremely rough gauge of costs can be attained by multiplying the numbers for each type of case listed in Appendix A by the average hours information contained in the section from IDS's FY12 Private Appointed Counsel Average Hours Study that is attached as Appendix B and then by the hourly rate for that type of case contained in Appendix C. Again, this analysis will be imperfect due to incomplete data. Moreover, while it will provide average costs for each type of case on a statewide basis, given the small number of cases involved, these averages may be misleading.

IV. FY 2016-17 CONFLICTS OF INTEREST ASSIGNED TO OTHER OFFICES

As shown in Appendix A, public defender offices transferred 228 conflict cases to other offices in FY 2016-17. However, it should be noted that all of those assignments were made by the Mecklenburg office to the Gaston conflict attorneys.

Due to the inability noted above of identifying specific cases and the resulting lack of knowledge of how and in which court the cases were ultimately resolved, the only way to assess PAC equivalent costs for the Gaston conflict attorneys' work is to calculate them based on the attorney's disposed cases. In FY 2016-17, the Gaston conflict attorneys in combination closed 112 cases, including ending representation by withdrawing from three cases due to the attorneys' own conflicts of interest. The numbers of assignments and dispositions may differ for a number of reasons, including that some of the cases disposed may have been assigned during the prior fiscal year, some of the cases assigned may be as yet unresolved, and some cases may have involved multiple charges assigned at different times and counted separately that were ultimately wrapped up into singular dispositions.

If PAC had handled the Gaston conflict attorneys' 109 disposed cases in FY 2016-17, it would have cost \$61,381. Again, this calculation is based on statewide averages that may not be meaningful applied to such a small number of cases. Because the personnel costs for the Gaston conflict attorneys exceeded that amount, no PAC savings were generated from this arrangement.

Although no other office transferred cases to another office in FY 2016-17, it should be noted that in past years, any interoffice transfers were initiated in order to deal with the exhaustion of availability of local counsel and not from a consideration of cost-efficiency. In fact, IDS does not believe that, even if sufficient data were available, a more extensive analysis would reveal that public defender offices' covering other offices' conflicts, other than perhaps in conflict units attached to offices, would produce cost efficiencies. While there may be value in having public defender offices meet the needs of adjacent districts, having a public defender attorney travel some distance to handle one case in another jurisdiction would likely be more costly than assigning the case to private counsel.

APPENDIX A

**FARMOUT COUNTS FOR ALL PUBLIC DEFENDER DISTRICTS
FY2016-17**

Total All					
	Case Specific Conflict	Workload Conflict	Non-Conflict Farmout	Transferred To Other PD Office	Total
	16660	9340	9152	228	35380

District Court Criminal					
	Case Specific Conflict	Workload Conflict	Non-Conflict Farmout	Transferred To Other PD Office	Total
Felony A	13	1	3	0	17
Felony B1	72	21	13	0	106
Felony B2	48	3	8	0	59
Felony C	252	64	44	1	361
Felony D	631	92	127	11	861
Felony E	393	60	93	4	550
Felony F	307	88	101	4	500
Felony G	734	240	283	12	1269
Felony H	2732	972	1157	125	4986
Felony I	1466	426	468	26	2386
Felony Prob Violation	75	503	130	0	708
Fugitive Extradition	6	6	44	13	69
DWI	207	523	334	6	1070
Misd Non-Traffic	6245	4125	3693	19	14082
Class 3 Misd or Traff	421	837	574	0	1832
Other Traffic	229	246	312	3	790
Criminal Contempt	3	6	2	0	11
Non-Felony Prob Viol	400	357	240	2	999
MAR	5	0	0	0	5
Other	31	35	34	0	100
Drug Trt Crt Session	0	36	0	0	36
Oth Spec Crt Session	7	0	3	0	10
Total	14277	8641	7663	226	30807

Superior Court Criminal					
	Case Specific Conflict	Workload Conflict	Non-Conflict Farmout	Transferred To Other PD Office	Total
Felony A	2	0	1	0	3
Felony B1	26	5	17	0	48
Felony B2	24	0	4	0	28
Felony C	97	8	61	0	166
Felony D	149	17	60	0	226
Felony E	79	13	44	0	136
Felony F	69	10	33	0	112
Felony G	150	25	84	0	259
Felony H	416	68	213	2	699
Felony I	182	16	78	0	276
Fel Prob Violation	541	45	448	0	1034
DWI Appeal	6	6	9	0	21
Misd Appeal, Non-traf	39	8	21	0	68
Class 3 Misd/Traf Appl	6	2	1	0	9
Other Traffic Appeal	3	0	1	0	4
Criminal Contempt	0	0	0	0	0
Civil Contempt Other	0	0	0	0	0
Competency	0	0	0	0	0
Involuntary Committ	0	0	0	0	0
Non-Felony Prob Viol	6	3	36	0	45
MAR	0	0	3	0	3
Term Sex Off Reg	7	0	0	0	7
Satellite Monitoring	0	1	2	0	3
Other	0	0	3	0	3
Drug Trt Crt Session	2	36	0	0	38
Oth Spc Crt Session	0	0	0	0	0
Total	1804	263	1119	2	3188

District Court Juvenile					
	Case Specific Conflict	Workload Conflict	Non-Conflict Farmout	Transferred To Other PD Office	Total
Felony A	2	0	0	0	2
Felony B1	0	0	1	0	1
Felony B2	0	0	0	0	0
Felony C	1	0	0	0	1
Felony D	10	0	4	0	14
Felony E	3	0	6	0	9
Felony F	0	0	0	0	0
Felony G	12	1	12	0	25
Felony H	39	3	35	0	77
Felony I	14	1	18	0	33
Misdemeanor	57	32	66	0	155
Civil Contempt Other	8	0	2	0	10
Motion for Review	24	3	172	0	199
Subsequent Review	0	0	1	0	1
Other	8	0	1	0	9
Drug Trt CRT Session	0	0	0	0	0
Drug Trt CRT Final Disp	0	0	3	0	3
Total	178	40	321	0	539

District Court Civil					
	Case Specific Conflict	Workload Conflict	Non-Conflict Farmout	Transferred To Other PD Office	Total
A/N/D Adjud	186	0	19	0	205
A/N/D Review	0	0	1	0	1
Term Parental Rights	34	0	28	0	62
Child Supp Contempt	2	0	0	0	2
Civil Contempt Other	0	1	0	0	1
Invol Commit, Adult	174	372	1	0	547
Invol Commit, Juv	0	23	0	0	23
Competency	5	0	0	0	5
Other	0	0	0	0	0
Drug Trt CRT Session	0	0	0	0	0
Oth Spec CRT Session	0	0	0	0	0
Total	401	396	49	0	846

APPENDIX B

Private Assigned Counsel Average Hours Claimed per Case by Case Type and Year Case Disposed: Superior Court is Non-Trial Only, District and Other Case Types Include Non-Trial and Trials
(PAC Data through 11/8/2012. Excludes Flat Fee and Attorney-for-the-day Case Types Even If Paid at Hourly Rate)

		FY05				FY10					FY11					FY12					Cost		Hours	
		No. Fee Apps	Avg. Hrs	Min.	Max.	No. Fee Apps	Avg. Hrs	Med. Hrs	Min.	Max.	No. Fee Apps	Avg. Hrs	Med. Hrs	Min.	Max.	No. Fee Apps	Avg. Hrs	Med. Hrs	Min.	Max.	% Change in Cost Due to Hrs FY10 to FY11	% Change in Cost Due to Hrs FY10 to FY12	% Change in Hrs FY10 to FY11	% Change in Hrs FY10 to FY12
Sup. Court	Felony Class Unknown					28	8.84	5.00	2.00	76.52	31	13.03	7.00	2.00	139.20	14	9.93	9.00	2.00	19.50	52.6%	5.5%	47.3%	12.3%
	Class A Felony	9	41.70	16.00	552.00	47	51.72	40.20	1.50	199.60	26	51.30	33.45	3.00	281.75	27	59.02	28.30	2.20	199.75	0.0%	12.8%	-0.8%	14.1%
	Class B1 Felony	118	19.60	4.00	235.00																			
	Class B2 Felony	37	21.80	4.00	150.00																			
	Class B1 or B2 Felony					540	24.13	16.00	1.00	222.20	519	24.29	16.00	2.00	142.60	524	26.56	17.95	1.60	421.30	0.7%	9.2%	0.7%	10.1%
	Class C Felony	325	14.70	1.00	100.00	1,447	15.26	10.80	.65	180.40	1,507	15.03	11.00	.60	126.00	1,386	15.30	11.00	.60	190.50	-1.4%	-0.8%	-1.5%	0.3%
	Class D Felony	352	13.40	2.00	169.00	1,534	13.26	10.00	1.50	113.55	1,343	14.29	11.00	1.00	118.15	1,256	14.42	11.00	1.00	161.50	6.7%	6.1%	7.7%	8.8%
	Class E Felony	173	10.00	2.00	66.00	848	10.52	8.00	1.00	84.00	848	11.96	9.00	1.00	120.10	833	12.69	10.00	1.00	85.00	13.6%	20.0%	13.7%	20.6%
	Class F Felony	248	10.20	1.00	163.00	1,185	10.03	8.00	1.00	82.50	1,320	10.30	8.00	1.00	97.50	1,404	10.47	8.50	.90	89.40	3.0%	4.6%	2.7%	4.4%
	Class G Felony	464	8.30	1.00	126.00	2,433	8.91	7.40	.60	57.25	2,430	9.30	7.60	.50	187.00	2,164	9.71	8.00	.80	110.50	4.5%	7.5%	4.4%	9.0%
	Class H Felony	1,954	7.00	1.00	67.00	7,741	7.51	6.00	.50	107.25	7,977	7.91	6.75	.50	73.25	7,683	8.24	7.00	.50	65.70	5.6%	9.0%	5.3%	9.7%
	Class I Felony	849	6.30	1.00	153.00	2,957	6.64	5.75	.85	110.00	2,972	6.97	6.00	0.75	100.00	2,635	7.59	6.10	.50	148.75	5.1%	12.2%	4.9%	14.3%
	Felony PV	4,258	3.20	1.00	23.80	5,368	3.10	2.60	.50	53.90	5,650	3.13	2.80	.40	25.20	5,126	3.18	3.00	.30	40.00	0.6%	1.7%	0.7%	2.6%
	DWI	359	7.20	1.00	65.00	204	6.64	5.33	1.00	30.00	267	7.56	5.20	1.00	186.25	226	7.58	6.00	1.00	51.50	19.7%	15.0%	13.9%	14.3%
	Misd. Non-traffic	1,333	5.80	1.00	42.80	1,151	5.31	4.00	.50	55.00	1,179	5.73	4.70	.50	45.20	1,141	5.99	5.00	.50	40.50	8.1%	11.7%	7.8%	12.7%
	Misd. Traffic (non-DWI)	415	4.40	1.00	21.00	411	4.53	4.00	1.00	46.00	379	4.56	4.00	.50	18.30	395	5.09	4.10	.50	33.25	0.6%	11.0%	0.6%	12.4%
	Criminal Contempt					24	3.77	3.00	1.00	9.50	37	4.62	4.00	1.00	18.25	29	4.50	3.40	1.00	17.25	35.3%	20.3%	22.5%	19.2%
	Misd. PV	1,063	3.30	1.00	26.50	1,277	3.12	2.80	.20	15.80	1,354	3.28	3.00	.50	23.50	1,192	3.46	3.00	.40	18.20	5.8%	9.4%	5.2%	11.0%
	Satellite-based monitoring					2	6.00	6.00	3.00	9.00	20	7.99	6.03	2.25	26.80	72	4.47	3.00	1.00	43.50	335.8%	-913.9%	33.1%	-25.6%
	Other--Criminal					156	6.91	4.00	.50	138.70	116	4.83	3.00	.60	27.25	115	4.45	3.25	.50	28.60	-22.4%	-26.8%	-30.1%	-35.6%
	Unknown/Not Entered															2	3.05	3.05	2.00	4.10	0.0%	0.0%		
	Total	11,957		1.00	552.00	27,353	7.66	5.60	.20	222.20	27,975	7.86	6.00	.40	281.75	26,224	8.26	6.00	.30	421.30	2.3%	6.4%	2.6%	7.8%
Dist. Court	Felony Class Unknown					67	4.79	4.00	1.00	33.60	43	3.78	3.50	1.00	10.00	25	5.37	4.00	1.00	26.75	-13.6%	4.3%	-21.1%	12.1%
	Class A Felony					21	11.21	4.00	1.00	50.00	17	19.80	5.70	2.00	85.50	7	10.91	4.00	1.50	34.70	64.5%	-1.5%	76.6%	-2.7%
	Class B1 or B2 Felony					102	11.58	8.00	1.00	64.91	87	10.26	7.00	1.00	65.00	63	9.94	6.70	1.00	66.75	-10.1%	-10.9%	-11.4%	-14.2%
	Class C Felony					325	7.02	5.00	.50	42.30	323	7.48	5.00	.75	71.50	307	8.01	5.30	.50	88.00	6.5%	7.7%	6.5%	14.1%
	Class D Felony					451	5.95	4.60	.50	49.00	413	6.64	4.90	.40	116.00	407	6.10	5.00	.50	69.00	10.7%	-3.6%	11.6%	2.5%
	Class E Felony					483	5.36	4.20	.90	68.50	521	5.57	4.10	.50	50.80	504	5.62	4.50	1.00	50.00	4.3%	4.7%	3.9%	4.8%
	Class F Felony					521	5.30	4.00	.60	79.25	508	5.27	4.50	.50	43.75	547	5.87	4.50	.80	72.09	-0.6%	11.5%	-0.5%	10.6%
	Class G Felony					830	4.81	4.00	.50	36.00	908	4.96	4.00	.50	29.00	871	5.47	4.25	.50	80.00	3.3%	13.8%	3.1%	13.6%
	Class H Felony					7,517	4.24	4.00	.30	50.50	7,548	4.43	4.00	.20	48.00	7,793	4.63	4.00	.10	30.75	4.5%	9.3%	4.5%	9.2%
	Class I Felony					3,248	4.00	3.50	.50	44.02	3,233	4.23	4.00	.25	36.40	3,027	4.46	4.00	.25	33.35	5.6%	10.6%	5.6%	11.4%
	Felony PV		3.00	.10	16.00	388	2.80	2.50	.50	14.00	425	2.79	2.40	.25	11.40	442	3.06	2.90	.50	17.00	0.2%	12.2%	-0.4%	9.1%
	DWI		3.70	.10	25.00	7,686	4.16	3.80	.25	65.80	7,803	4.41	4.00	.40	49.25	6,851	4.86	4.00	.10	50.00	6.0%	14.6%	5.9%	16.8%
	Misd. Non-traffic		3.00	.10	52.00	53,550	3.04	2.80	.10	50.50	55,082	3.12	3.00	.15	39.50	52,919	3.31	3.00	.20	46.50	2.5%	8.1%	2.4%	8.7%
	Misd. Traffic (non-DWI)		2.90	.10	16.00	15,840	2.89	2.60	.20	27.75	17,647	2.93	2.70	.08	38.00	16,331	3.16	3.00	.20	69.40	1.8%	8.8%	1.5%	9.2%
	Criminal Contempt					233	2.41	2.00	.25	10.00	272	2.76	2.20	.50	16.70	252	2.81	2.20	.10	22.70	17.3%	17.4%	14.4%	16.4%
	Misd. PV		2.60	.10	17.60	6,120	2.65	2.25	.25	18.50	6,574	2.70	2.20	.20	26.50	6,458	2.78	2.50	.10	18.00	2.1%	4.7%	1.9%	4.9%
	Other--Criminal					836	2.80	2.25	.20	22.19	882	3.00	2.50	.33	24.40	856	3.24	2.75	.30	37.60	7.8%	14.9%	7.2%	15.7%
	Unknown/Not Entered					1	1.50	1.50	1.50	1.50	7	17.66	18.80	1.00	39.90	6	10.63	9.85	2.10	21.50	7621.9%	3746.4%	1077.1%	608.3%
	Total	66,303		0.10	52.00	98,219	3.28	3.00	.10	79.25	102,293	3.36	3.00	.08	116.00	97,666	3.57	3.00	.10	88.00	2.8%	8.3%	2.6%	9.0%

Private Assigned Counsel Average Hours Claimed per Case by Case Type and Year Case Disposed: Superior Court is Non-Trial Only, District and Other Case Types Include Non-Trial and Trials
(PAC Data through 11/8/2012. Excludes Flat Fee and Attorney-for-the-day Case Types Even If Paid at Hourly Rate)

		FY05				FY10					FY11					FY12					Cost		Hours	
		No. Fee Apps	Avg. Hrs	Min.	Max.	No. Fee Apps	Avg. Hrs	Med. Hrs	Min.	Max.	No. Fee Apps	Avg. Hrs	Med. Hrs	Min.	Max.	No. Fee Apps	Avg. Hrs	Med. Hrs	Min.	Max.	% Change in Cost Due to Hrs FY10 to FY11	% Change in Cost Due to Hrs FY10 to FY12	% Change in Hrs FY10 to FY11	% Change in Hrs FY10 to FY12
Adult Crim.	Felony Class Unknown					95	5.99	4.25	1.00	76.52	74	7.65	4.50	1.00	139.20	39	7.01	5.00	1.00	26.75	24.1%	6.9%	27.9%	17.0%
	Class A Felony					68	39.21	27.50	1.00	199.60	43	38.85	22.75	2.00	281.75	34	49.11	25.00	1.50	199.75	0.2%	16.8%	-0.9%	25.2%
	Class B1 or B2 Felony					642	22.13	15.00	1.00	222.20	606	22.28	15.00	1.00	142.60	587	24.78	16.50	1.00	421.30	0.6%	10.2%	0.6%	11.9%
	Class C Felony					1,772	13.75	10.00	.50	180.40	1,830	13.70	10.00	.60	126.00	1,693	13.98	10.00	.50	190.50	-0.3%	0.1%	-0.4%	1.7%
	Class D Felony					1,985	11.60	9.00	.50	113.55	1,756	12.49	9.33	.40	118.15	1,663	12.39	9.00	.50	161.50	6.7%	4.0%	7.6%	6.8%
	Class E Felony					1,331	8.65	7.00	.90	84.00	1,369	9.53	7.00	.50	120.10	1,337	10.02	7.50	1.00	85.00	10.4%	15.9%	10.2%	15.9%
	Class F Felony					1,706	8.58	6.50	.60	82.50	1,828	8.90	7.00	.50	97.50	1,951	9.18	7.00	.80	89.40	4.2%	7.6%	3.7%	7.0%
	Class G Felony					3,263	7.87	6.25	.50	57.25	3,338	8.12	6.40	.50	187.00	3,035	8.49	7.00	.50	110.50	3.3%	6.7%	3.3%	8.0%
	Class H Felony					15,258	5.90	5.00	.30	107.25	15,525	6.22	5.00	.20	73.25	15,476	6.42	5.00	.10	65.70	5.6%	8.4%	5.4%	8.8%
	Class I Felony					6,205	5.26	4.20	.50	110.00	6,205	5.54	4.75	.25	100.00	5,662	5.92	5.00	.25	148.75	5.4%	11.0%	5.3%	12.5%
	Felony PV					5,756	3.08	2.50	.50	53.90	6,075	3.10	2.75	.25	25.20	5,568	3.17	3.00	.30	40.00	0.6%	2.1%	0.6%	2.9%
	DWI					7,890	4.23	3.91	.25	65.80	8,070	4.51	4.00	.40	186.25	7,077	4.95	4.00	.10	51.50	7.1%	15.0%	6.7%	17.1%
	Misd. Non-traffic					54,701	3.09	2.90	.10	55.00	56,261	3.17	3.00	.15	45.20	54,060	3.36	3.00	.20	46.50	2.8%	8.3%	2.6%	8.8%
	Misd. Traffic (non-DWI)					16,251	2.93	2.70	.20	46.00	18,026	2.97	2.70	.08	38.00	16,726	3.20	3.00	.20	69.40	1.4%	8.8%	1.2%	9.2%
	Criminal Contempt					257	2.54	2.00	.25	10.00	309	2.98	2.42	.50	18.25	281	2.98	2.35	.10	22.70	22.1%	18.6%	17.5%	17.4%
	Misd. PV					7,397	2.73	2.40	.20	18.50	7,928	2.80	2.30	.20	26.50	7,650	2.88	2.50	.10	18.20	2.8%	5.2%	2.5%	5.6%
	Satellite-based monitoring					2	6.00	6.00	3.00	9.00	20	7.99	6.03	2.25	26.80	72	4.47	3.00	1.00	43.50	335.8%	-913.9%	33.1%	-25.6%
	Other--Criminal					992	3.45	2.50	.20	138.70	998	3.22	2.50	.33	27.25	971	3.39	2.90	.30	37.60	-7.8%	-4.1%	-6.7%	-1.8%
	Unknown/Not Entered					1	1.50	1.50	1.50	1.50	7	17.66	18.80	1.00	39.90	8	8.73	3.90	2.00	21.50	7621.9%	3990.0%	1077.1%	482.1%
	Total	78,260		0.10	552	125,572	4.23	3.00	.10	222.20	130,268	4.33	3.00	0.08	281.75	123,890	4.56	3.45	.10	421.30	2.2%	6.8%	2.3%	7.8%
Civil	AND					19,174	5.76	3.90	0.00	179.00	19,216	6.23	4.00	0.00	244.75	15,807	6.10	4.00	0.00	235.80	8.3%	6.3%	8.3%	6.0%
	TPR					953	10.28	6.00	0.00	107.00	1,019	9.91	5.55	0.00	136.00	759	9.65	6.00	.20	89.50	-3.6%	-4.1%	-3.5%	-6.1%
	Child Support Contempt	3	0.1	30.6		12,774	2.83	2.25	.01	40.00	12,668	2.99	2.50	0.00	54.50	13,110	3.09	2.50	0.00	54.90	5.3%	10.1%	5.6%	9.0%
	Other Civil Contempt					243	4.81	4.00	.20	41.25	339	4.71	3.50	.50	54.47	201	5.23	4.00	1.00	49.70	-3.5%	5.5%	-2.1%	8.7%
	Invol. Commitment					2,984	1.37	1.00	0.00	40.00	3,572	1.34	1.00	.05	17.37	3,691	1.31	1.00	0.00	28.50	-3.4%	-6.6%	-2.3%	-5.0%
	Competency					2,956	4.43	3.25	0.00	95.30	3,507	4.64	3.50	0.00	84.50	3,479	5.00	3.75	0.00	61.60	4.9%	15.8%	4.8%	12.9%
	Other--Civil					184	3.16	2.23	.40	32.30	235	3.48	2.10	.32	46.25	109	3.79	2.40	.50	58.70	20.8%	18.3%	10.0%	20.0%
	Total					39,268	4.46	3.00	0.00	179.00	40,556	4.72	3.00	0.00	244.75	37,156	4.52	3.00	0.00	235.80	5.7%	2.3%	5.8%	1.3%
Juv.	Felony Class Unknown					29	5.92	5.00	.50	30.00	6	7.88	4.50	1.55	27.85	14	3.73	3.00	1.00	12.00	6.5%	-18.4%	33.1%	-37.0%
	Class A Felony					8	21.42	9.60	0.00	59.00	10	47.27	31.70	1.60	120.60	7	36.60	42.50	2.05	85.50	56.7%	10.0%	120.7%	70.9%
	Class B1 or B2 Felony					70	14.44	8.00	1.00	117.25	75	12.59	8.00	1.10	49.30	90	11.73	8.00	1.00	91.00	-13.4%	-26.8%	-12.9%	-18.8%
	Class C Felony					58	9.95	7.30	.70	51.90	59	10.00	7.50	.50	45.60	49	11.34	8.50	2.00	35.30	-2.4%	8.7%	0.5%	14.0%
	Class D Felony					86	9.14	6.88	1.22	46.50	84	13.98	8.60	2.25	83.20	101	10.06	8.00	1.00	37.40	51.3%	6.7%	53.0%	10.1%
	Class E Felony					38	5.79	4.30	1.00	34.90	49	10.20	6.91	1.70	63.50	28	10.33	6.60	1.60	29.75	97.2%	54.7%	76.1%	78.3%
	Class F Felony					62	6.80	4.75	1.00	40.00	65	7.98	7.00	2.00	28.75	62	5.94	4.50	1.60	26.50	18.5%	-13.4%	17.5%	-12.5%
	Class G Felony					117	6.56	5.00	.50	72.00	107	6.57	5.00	1.00	31.90	104	6.37	5.10	.70	31.00	-0.2%	-3.1%	0.2%	-2.9%
	Class H Felony					888	5.26	4.20	.14	33.10	811	5.27	4.10	.60	38.50	759	5.49	4.30	.50	42.00	-0.5%	2.2%	0.0%	4.2%
	Class I Felony					335	4.76	4.00	.25	36.90	284	5.10	4.00	.50	25.90	290	5.42	4.00	1.00	67.80	5.6%	10.5%	7.0%	13.8%
	Misd. Non-traffic					4,061	3.45	3.00	.20	69.00	3,754	3.55	3.00	.04	61.50	3,677	3.63	3.00	.06	41.75	2.8%	3.7%	2.9%	5.4%
	Juvenile Delinquency					9	3.97	1.60	.70	20.50	4	2.98	2.95	2.00	4.00	1	1.00	1.00	1.00	1.00	-11.2%	-8.3%	-25.0%	-74.8%
	Motion for Review--PV					1,655	2.61	2.00	.05	22.25	1,564	2.65	2.00	.08	32.40	1,344	2.63	2.00	.25	22.10	1.3%	-0.2%	1.5%	0.6%
	Motion for Review--Other					679	2.12	1.80	.30	17.00	618	2.13	2.00	0.00	14.25	463	2.33	2.00	.20	13.30	0.5%	6.1%	0.4%	9.8%
	Status Review					205	2.16	1.75	.20	11.00	242	2.12	1.70	.30	16.40	136	2.10	1.73	.40	12.70	-2.6%	-2.8%	-1.7%	-2.7%
	Detention Hearing					36	1.82	1.70	.25	4.00	39	1.73	1.50	.50	5.75	20	2.22	2.05	.50	5.00	-6.0%	11.6%	-4.7%	22.0%
	Undisciplined (Contempt)					324	2.79	2.28	.40	33.90	218	2.76	2.25	.25	22.50	157	2.51	2.00	.35	9.50	1.6%	-4.0%	-1.1%	-9.8%
	Satellite-based monitoring															3	4.50	3.50	2.00	8.00	0.0%	0.0%		
	Competency					8	2.51	2.00	1.00	5.00	13	3.71	2.00	1.00	12.00	7	4.53	5.00	1.50	7.35	77.3%	72.1%	47.6%	80.2%
	Other--Criminal					398	3.13	2.00	.20	25.60	348	3.17	2.25	.30	27.00	374	2.90	2.00	1.00	35.40	1.0%	-7.8%	1.4%	-7.3%
	Unknown/Not Entered										4	7.75	7.50	4.00	12.00	2	4.50	4.50	2.00	7.00	0.0%	0.0%		
	Total					9,066	3.63	2.90	0.00	117.25	8,354	3.81	3.00	0.00	120.60	7,688	3.88	3.00	0.00	91.00	4.9%	4.9%	5.1%	7.0%

Private Assigned Counsel Average Hours Claimed per Case by Case Type and Year Case Disposed: Superior Court is Non-Trial Only, District and Other Case Types Include Non-Trial and Trials
(PAC Data through 11/8/2012. Excludes Flat Fee and Attorney-for-the-day Case Types Even If Paid at Hourly Rate)

		FY05				FY10					FY11					FY12					Cost		Hours	
		No. Fee Apps	Avg. Hrs	Min.	Max.	No. Fee Apps	Avg. Hrs	Med. Hrs	Min.	Max.	No. Fee Apps	Avg. Hrs	Med. Hrs	Min.	Max.	No. Fee Apps	Avg. Hrs	Med. Hrs	Min.	Max.	% Change in Cost Due to Hrs FY10 to FY11	% Change in Cost Due to Hrs FY10 to FY12	% Change in Hrs FY10 to FY11	% Change in Hrs FY10 to FY12
GAL	AND					2,339	5.30	3.60	0.00	105.15	2,509	5.50	3.50	0.00	77.40	1,995	5.27	3.75	.20	129.80	3.9%	0.4%	3.9%	-0.4%
	TPR					171	8.82	5.00	.40	78.80	152	8.37	5.70	1.00	75.30	128	9.93	6.00	2.00	129.70	-4.6%	10.5%	-5.0%	12.6%
	Competency					379	4.48	3.40	0.00	29.71	36	5.94	4.70	1.00	22.00	10	3.56	2.50	1.00	10.25	3.1%	-0.6%	32.6%	-20.7%
	GAL										2	13.00	13.00	.50	25.50						0.0%	0.0%		
	Other--Civil					163	4.26	3.35	.50	29.50	163	4.89	4.00	.70	37.67	136	5.11	4.00	0.00	20.00	15.7%	15.6%	14.6%	19.9%
	Unknown/Not Entered					1	1.60	1.60	1.60	1.60	1	0.00	0.00	0.00	0.00						481.9%	-100.0%		
	Total					3,053	5.34	3.70	0.00	105.15	2,863	5.63	3.70	0.00	77.40	2,269	5.52	3.90	0.00	129.80	4.9%	3.1%	5.5%	3.4%
Total	Felony Class Unknown					124	5.97	4.50	.50	76.52	80	7.67	4.50	1.00	139.20	53	6.14	4.50	1.00	26.75	20.5%	1.1%	28.5%	2.9%
	Class A Felony					76	37.34	25.60	0.00	199.60	53	40.44	22.75	1.60	281.75	41	46.98	25.00	1.50	199.75	4.1%	15.6%	8.3%	25.8%
	Class B1 or B2 Felony					712	21.38	14.50	1.00	222.20	681	21.21	14.30	1.00	142.60	677	23.04	15.00	1.00	421.30	-0.7%	6.6%	-0.8%	7.8%
	Class C Felony					1,830	13.63	9.75	.50	180.40	1,889	13.58	10.00	.50	126.00	1,742	13.91	10.00	.50	190.50	-0.3%	0.4%	-0.4%	2.1%
	Class D Felony					2,071	11.50	9.00	.50	113.55	1,840	12.56	9.10	.40	118.15	1,764	12.25	9.00	.50	161.50	8.1%	3.8%	9.2%	6.6%
	Class E Felony					1,369	8.57	7.00	.90	84.00	1,418	9.55	7.00	.50	120.10	1,365	10.03	7.50	1.00	85.00	11.7%	16.8%	11.5%	17.1%
	Class F Felony					1,768	8.52	6.50	.60	82.50	1,893	8.87	7.00	.50	97.50	2,013	9.08	7.00	.80	89.40	4.6%	7.1%	4.1%	6.6%
	Class G Felony					3,380	7.82	6.00	.50	72.00	3,445	8.07	6.25	.50	187.00	3,139	8.42	7.00	.50	110.50	3.3%	6.4%	3.2%	7.7%
	Class H Felony					16,146	5.86	5.00	.14	107.25	16,336	6.17	5.00	.20	73.25	16,235	6.38	5.00	.10	65.70	5.4%	8.3%	5.2%	8.8%
	Class I Felony					6,540	5.24	4.20	.25	110.00	6,489	5.52	4.70	.25	100.00	5,952	5.89	5.00	.25	148.75	5.5%	11.0%	5.5%	12.6%
	Felony PV					5,756	3.08	2.50	.50	53.90	6,075	3.10	2.75	.25	25.20	5,568	3.17	3.00	.30	40.00	0.6%	2.1%	0.6%	2.9%
	DWI					7,890	4.23	3.91	.25	65.80	8,070	4.51	4.00	.40	186.25	7,077	4.95	4.00	.10	51.50	7.1%	15.0%	6.7%	17.1%
	Misd. Non-traffic					58,762	3.12	2.90	.10	69.00	60,015	3.19	3.00	.04	61.50	57,737	3.38	3.00	.06	46.50	2.7%	7.9%	2.5%	8.5%
	Juvenile Delinquency					9	3.97	1.60	.70	20.50	4	2.98	2.95	2.00	4.00	1	1.00	1.00	1.00	1.00	-11.2%	-8.3%	-25.0%	-74.8%
	Misd. Traffic (non-DWI)					16,251	2.93	2.70	.20	46.00	18,026	2.97	2.70	.08	38.00	16,726	3.20	3.00	.20	69.40	1.4%	8.8%	1.2%	9.2%
	Criminal Contempt					257	2.54	2.00	.25	10.00	309	2.98	2.42	.50	18.25	281	2.98	2.35	.10	22.70	22.1%	18.6%	17.5%	17.4%
	Misd. PV					7,397	2.73	2.40	.20	18.50	7,928	2.80	2.30	.20	26.50	7,650	2.88	2.50	.10	18.20	2.8%	5.2%	2.5%	5.6%
	Motion for Review--PV					1,655	2.61	2.00	.05	22.25	1,564	2.65	2.00	.08	32.40	1,344	2.63	2.00	.25	22.10	1.3%	-0.2%	1.5%	0.6%
	Motion for Review--Other					679	2.12	1.80	.30	17.00	618	2.13	2.00	0.00	14.25	463	2.33	2.00	.20	13.30	0.5%	6.1%	0.4%	9.8%
	Status Review					205	2.16	1.75	.20	11.00	242	2.12	1.70	.30	16.40	136	2.10	1.73	.40	12.70	-2.6%	-2.8%	-1.7%	-2.7%
	Detention Hearing					36	1.82	1.70	.25	4.00	39	1.73	1.50	.50	5.75	20	2.22	2.05	.50	5.00	-6.0%	11.6%	-4.7%	22.0%
	Undisciplined (Contempt)					324	2.79	2.28	.40	33.90	218	2.76	2.25	.25	22.50	157	2.51	2.00	.35	9.50	1.6%	-4.0%	-1.1%	-9.8%
	Satellite-based monitoring					2	6.00	6.00	3.00	9.00	20	7.99	6.03	2.25	26.80	75	4.47	3.00	1.00	43.50	335.8%	-956.9%	33.1%	-25.6%
	AND					21,513	5.71	3.85	0.00	179.00	21,725	6.15	4.00	0.00	244.75	17,802	6.01	4.00	0.00	235.80	7.8%	5.7%	7.7%	5.3%
	TPR					1,124	10.05	5.80	0.00	107.00	1,171	9.71	5.55	0.00	136.00	887	9.69	6.00	.20	129.70	-3.4%	-2.1%	-3.4%	-3.6%
	Child Support Contempt					12,774	2.83	2.25	.01	40.00	12,668	2.99	2.50	0.00	54.50	13,110	3.09	2.50	0.00	54.90	5.3%	10.1%	5.6%	9.0%
	Other Civil Contempt					243	4.81	4.00	.20	41.25	339	4.71	3.50	.50	54.47	201	5.23	4.00	1.00	49.70	-3.5%	5.5%	-2.1%	8.7%
	Invol. Commitment					2,984	1.37	1.00	0.00	40.00	3,572	1.34	1.00	.05	17.37	3,691	1.31	1.00	0.00	28.50	-3.4%	-6.6%	-2.3%	-5.0%
	Competency					3,343	4.43	3.30	0.00	95.30	3,556	4.65	3.50	0.00	84.50	3,496	5.00	3.78	0.00	61.60	4.5%	13.8%	4.9%	12.7%
	GAL										2	13.00	13.00	.50	25.50						0.0%	0.0%		
	Other--Civil					347	3.68	2.90	.40	32.30	398	4.05	2.78	.32	46.25	245	4.52	3.60	0.00	58.70	15.4%	19.0%	10.2%	23.0%
	Other--Criminal					1,390	3.36	2.50	.20	138.70	1,346	3.21	2.50	.30	27.25	1,345	3.25	2.60	0.00	37.60	-5.2%	-5.0%	-4.5%	-3.2%
	Unknown/Not Entered					2	1.55	1.55	1.50	1.60	12	12.88	11.00	0.00	39.90	10	7.89	3.90	2.00	21.50	4727.1%	2108.1%	731.2%	408.7%
	Total					176,959	4.27	3.00	0.00	222.20	182,041	4.41	3.00	0.00	281.75	171,003	4.54	3.25	0.00	421.30	3.2%	5.7%	3.3%	6.3%

Interims have been combined with final fee applications wherever possible. Excludes withdrawals and unmatched or open case interim fee applications.

Felony A cases include non-capital trial level cases only. Source: NC Office of Indigent Defense Services, Research Department, 12-6-12.

APPENDIX C

Private Assigned Counsel Rates

Updated November 19, 2012

Case Type	Old Hourly Rate	New Hourly Rate	Effective Date
Cases in which the highest charge against the defendant or juvenile was a non-potentially capital Class A-D felony, whether resolved in District or Superior Court, and satellite based monitoring “bring back” hearings	\$75	\$70	Cases in which counsel accepted appointment on or after May 2, 2011
All other cases resolved in District Court	\$75	\$55	Cases in which counsel accepted appointment on or after May 2, 2011; in addition, for all abuse, neglect, dependency, termination of parental rights, and child support contempt cases, all work done on or after July 1, 2011
Competency cases	\$75	\$55	Cases in which counsel accepted appointment on or after May 2, 2011
All other cases resolved in Superior Court	\$75	\$60	Cases in which counsel accepted appointment on or after May 2, 2011
Parole and post-release supervision revocation hearings	\$75	\$60	Cases in which counsel accepted appointment on or after May 2, 2011
Non-capital appeals and non-capital post-conviction where the most serious conviction was a Class A-D felony	\$75	\$70	Cases in which counsel accepted appointment on or after May 2, 2011
All other non-capital appeals and non-capital post-conviction	\$75	\$60	Cases in which counsel accepted appointment on or after May 2, 2011
Potentially capital cases at the trial level	\$95 when proceeding as a capital or potentially capital case; \$85 when declared non-capital	\$85 when proceeding as a capital or potentially capital case; \$75 when declared non-capital	Cases in which counsel accepted appointment on or after May 2, 2011
Capital appeals	\$95	\$85	Cases in which counsel accepted appointment on or after May 2, 2011
Capital post-conviction	\$95	\$85	All cases in which counsel accepted appointment on or after May 2, 2011; for all other cases, all work done on or after July 1, 2011
Annual status reviews following a finding of not guilty by reason of insanity	\$75	\$70 if underlying highest charge was Class A-D felony; \$60 for all other cases	All cases in which counsel accepted appointment on or after May 2, 2011; for all other cases, all work done on or after July 1, 2011