

PUBLIC DEFENDER CONFLICTS

IDS PRESENTATION TO JPS OVERSIGHT COMMITTEE

December 12, 2013

New G.S. 7A-498.7(f1)

- As amended by S.L. 360, Section 18A.6.(a), G.S. 7A-498.7(f1) requires 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
- S.L. 360, Section 18A.6.(b) further directs IDS to report the number of conflicts of interest during the prior fiscal year, the number of conflicts resolved through this authorization, and the savings in private assigned counsel (PAC) funds

Reasons PD Offices Assign Cases to PAC

- Direct conflicts of interest
 - In some districts, the courts assign all cases to the PD Office and the office reassigns to PAC if it identifies a conflict
 - In other districts, courts sometimes identify obvious conflicts and directly assign those cases to PAC
- Workload conflicts
- Efficiency and continuity of representation
 - E.g., a defendant is currently or was previously represented by PAC and it would be more efficient for the same attorney to handle the new charges

Ethical Obligations – Direct Conflicts

- RPC 1.7 generally prohibits representation of a client if the representation will be directly adverse to the interests of another client
- RPC 1.9 prohibits representation of another person in the same or a substantially related matter as that of a former client, absent written waiver
 - “Substantially related matter”:
 - Where the lawyer obtained confidential information from the former client that can be used against that client in the subsequent representation of an adverse party, or
 - Where facts relevant to the prior representation are relevant and material to the subsequent representation
- RPC 1.10 imputes to an attorney knowledge of any confidential information obtained by another attorney in the office during prior representation

Ethical Obligations – Workload Conflicts

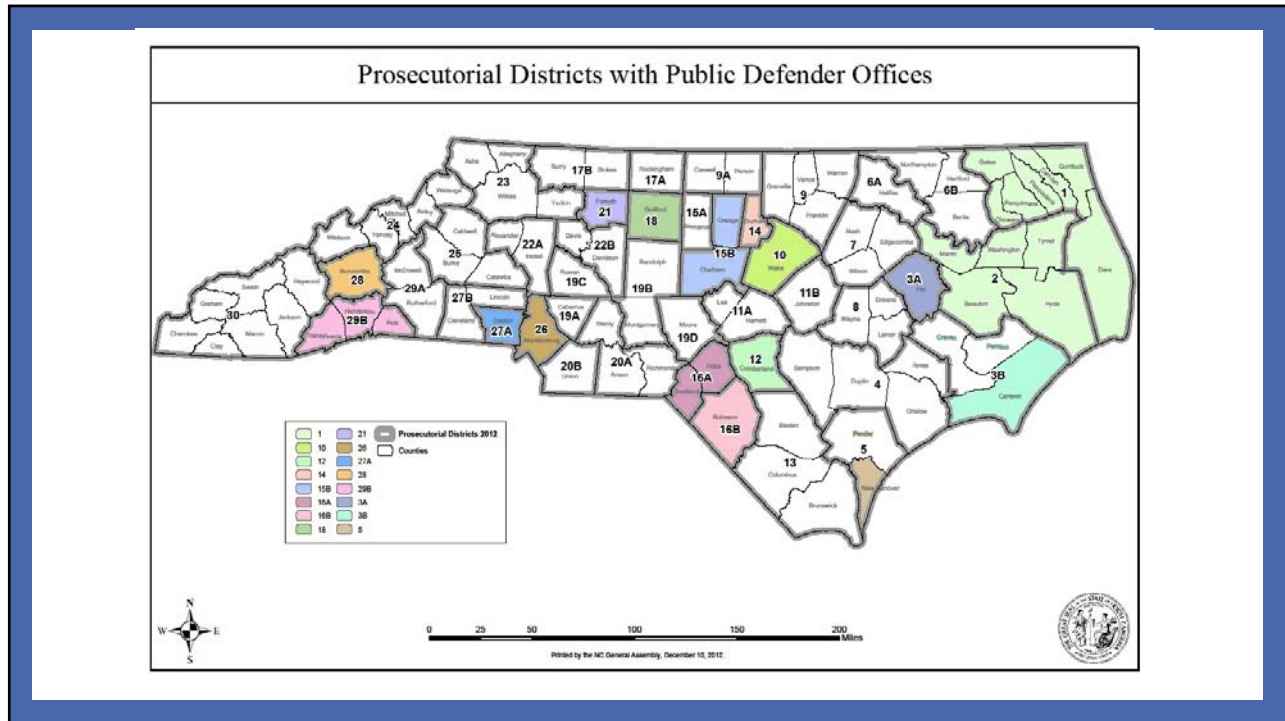
- RPC 1.1 requires attorneys to be competent, including allocating the necessary thoroughness and preparation for representation
- RPC 1.3 dictates diligence, which includes controlling workloads so that each matter can be handled competently
- RPC 5.1 places a duty on supervisors to ensure that subordinate attorneys adhere to the ethical rules
- ABA Formal Ethics Opinion 06-441 requires in part:
 - Attorneys should not accept cases and/or should withdraw from cases when workloads are excessive or soon will be;
 - Supervisors are to monitor subordinate attorneys' workloads to ensure that diligence and competence can be achieved and to take remedial action to reduce workloads when appropriate; and
 - Factors to be considered in assessing workloads include the number and complexity of cases, the availability of support services, and the experience, ability, and non-representational responsibilities of attorneys

Challenges with Using Neighboring PD Offices

- Geographical distance between offices adds travel time and expense
- Interferes with existing caseload and court coverage in home district

When it Might Work

- Offices that are in adjoining counties
- Very serious cases where the travel time and expenses are minimal compared to PAC expenditures



Private Assigned Counsel Average Hours Claimed by Case Type in FY12

- Superior Court
 - Class C Felony 15.30 hours
 - Class I Felony 3.18 hours

- District Court
 - Misdemeanor Non-Traffic 3.31 hours
 - DWI 4.86 hours

PD Offices Are Now Tracking This Data

- IDS has added to the PD online disposition reporting system the ability to track outside appointments, including any assignments to other PD offices in the region
- So, IDS will be able to report this information in the future
- BUT any calculation of PAC savings will be rough and based on average PAC case costs by type of case
- PAC savings will also have to be offset by the loss of productivity in the PD's home county

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.

	District Court Criminal	District Court Juvenile	District Court Civil	Superior Court	First Degree Murder	Appellate Court	Innocence Inquiry Commission
	Disposition		Withdrawal	Case Specific Conflict	Workload Conflict	Non-Conflict Farmout	Transferred To Other PD Office
Felony A	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony B1	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony B2	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony C	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony D	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony E	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony F	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony G	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony H	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony I	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Felony Prob Violation	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Fugitive Extradition	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
DWI	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Misdemeanor Non-Traffic	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Other Traffic	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Criminal Contempt	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Non-Felony Prob Violation	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
MAR	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Other	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>
Dist. Ct. Court Session	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>

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