



**OFFICE OF INDIGENT DEFENSE SERVICES
REPORT ON PUBLIC DEFENDER CONFLICTS FOR FISCAL YEAR 2012-13**

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

October 1, 2013

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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, Section 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, Section 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 indigents are entitled to counsel, mainly including juvenile delinquency; abuse, neglect, dependency and termination of parental rights; involuntary commitment; and child support contempt. Depending on local preferences, in some jurisdictions public defender offices are assigned all cases the offices have agreed 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.

To date, public defender offices have not typically covered each others' 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 do not face the same kinds of workload issues as full-time public defender attorneys and can more easily 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 district attorneys 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, the Attorney General has undertaken the prosecution of a police officer who shot a man in Charlotte in light of the District Attorney's avoiding any appearance of impropriety arising from the fact that his former law firm is representing the officer. *See Mitch Weiss, NC attorney general to handle police shooting case*, News and Observer, Sept. 19, 2013, available at <http://www.newsobserver.com/2013/09/19/3209281/da-asks-state-to-handle-nc-police.html>.

There is one exception to the general rule that North Carolina public defender offices do not cover each other's conflicts: the Gaston County and Mecklenburg County offices have an arrangement wherein the Gaston office employs an assistant public defender who is housed in the Mecklenburg office to handle some of the latter's low-level felony 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 TO DATE

Because offices have not had a clear requirement or need to track assignments outside their offices for conflicts or other reasons, there is a wide disparity among the offices regarding available data to date. Many offices have recorded assignments to outside counsel and the reasons therefor on forms or case files but have not compiled and cannot easily compile the numbers electronically for analysis. A few others have noted the cases and the reasons for outside assignment in formats that can be calculated, such as listing them in Excel spreadsheets or entering the information using various codes and other methods in the Public Defender Case Management System (CMS). Where conflict assignments are made from the courtroom, sometimes offices receive information about the appointments, but often they do not.

III. FY 2012-13 CONFLICTS OF INTEREST AND ASSIGNMENTS TO PAC

Although most of the public defender offices have not been compiling data on conflict reassignments prior to the enactment of G.S. 498.7(f1), IDS can report information for six offices that have been recording and tallying this information. It should be noted, though, that these offices have been employing divergent procedures without standard definitions, have done so as an assignment management tool rather than as a means of reporting precise data, and have not consistently been counting the cases that courts have reassigned. The numbers of conflicts each of those offices assigned to private counsel were as follows:

- *District 29B*: 605 conflict cases and 680 overload cases (cases were not delineated as felonies or misdemeanors).
- *Buncombe*: 299 felony conflict cases; 4 felony overload cases; 241 misdemeanor conflict cases; 19 misdemeanor overload cases; 57 juvenile delinquency conflict cases; 14 juvenile delinquency overload cases; and 3 involuntary commitment overload sessions, which could encompass a range of 20-40 respondents.
- *Forsyth*: 487 felony conflict cases; 1,453 misdemeanor and traffic conflict cases; and 735 misdemeanor overload cases.
- *Mecklenburg*: 1,287 felony conflict cases; 140 felony overload cases; 1,599 misdemeanor conflict cases; and 2,590 misdemeanor overload cases.
- *New Hanover*: 134 felony conflict cases; 65 felony overload cases; 172 misdemeanor conflict; and 238 misdemeanor overload cases.
- *Pitt*: 839 felony conflict cases; 69 felony overload cases; 663 misdemeanor conflict cases; and 330 misdemeanor overload cases.

Because the specific cases the offices reassigned cannot be identified, conveying actual cost information is not possible. Further, since the offices did not track the class of each felony conflict case, the type of each misdemeanor, or the ultimate court of jurisdiction at the time of disposition, it is likewise impossible to assess average costs for those cases absent further detail. Cases can require widely variant degrees of time and effort and thus cost more or less depending on the seriousness and type of the charge. For example, a Class A felony will almost always take more time than a Class I felony, and a DWI case will generally take more time than other misdemeanors. Likewise, a felony disposed in district court typically involves less time and money than one that is resolved in superior court.

With all that said, an extremely rough gauge of costs can be attained by multiplying the average hours information contained in the section from IDS's FY12 Private Appointed Counsel Average Hours Study that is attached as Appendix A by the hourly rate for that type of case contained in Appendix B, again noting the imperfection of such analysis due to incomplete data.

IV. FUTURE STEPS

A. TRACKING ASSIGNMENTS

Currently, the public defender offices report their case dispositions through an online system created by IDS. IDS has contracted with the former employee who developed this system to amend the programming to enable entry of data regarding assignments outside the offices and the reasons for those assignments. From this enhancement, IDS will be able to collect, aggregate, and analyze this information in order to better report it, along with estimated PAC costs, to the General Assembly. As required by S.L. 2013-360, Section 18B.10, IDS is working with the Administrative Office of the Courts to upgrade the public defenders' case management system by February 2015, and the means to collect and analyze this information should be a requirement of the new system.

B. ASSIGNMENTS BETWEEN PUBLIC DEFENDER OFFICES

As now required by G.S. 498.7(f1), when they identify cases where they have conflicts of interest, public defender offices will ascertain whether it would be practical to have another, geographically close office assume the representation. Given the costs and time associated with such reassignment, it would seem most efficient to do so in circumstances involving serious cases, such as murder and Class B1 felonies, where travel time is a relatively minor component and where assistant public defenders can take on the additional work. In addition to being cognizant of opportunities to utilize this provision, the offices will need to educate courts to make them aware of this change in the law and the need to consult with the offices about the prospects of having nearby offices intercede. IDS will also consider replicating the Gaston-Mecklenburg conflict counsel arrangement where it is feasible and cost-effective to do so.

APPENDIX A

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	.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	0.00	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 B

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 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