

COMMISSION ON INDIGENT DEFENSE SERVICES  
REPORT ON PUBLIC DEFENDER CONFLICTS  
FOR FISCAL YEAR 2023-2024

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

## **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, including misdemeanors, felonies, and probation violations. Some offices also handle other cases in which indigent persons are entitled to counsel, such as abuse, neglect, dependency, and termination of parental rights.

Some offices are not staffed to handle and, therefore not expected to take all the non-conflict cases that arise in their jurisdictions. For example, Judicial District 10 was originally and is currently staffed to accommodate approximately half of the adult criminal cases in the district.

Depending on local preferences, some jurisdictions assign all cases the offices have agreed and are staffed to handle to public defender offices who may then reassign conflict cases to private counsel. In other districts, judges or clerks who spot evident conflicts will assign other counsel as the cases arise. 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 time saving in investigation. Sometimes offices will assign cases to PAC whose specialized knowledge or skills afford heightened ability to address certain complex matters.

Public defender offices did not typically cover each other's conflict cases until G.S. 498.7(f1) was amended to allow it when practicable. Instead, public defenders relied on local private counsel to fill in the gaps. This practice made sense because PAC already practicing in the district were readily available and did not incur further costs of travel. It also avoided inefficiencies created by handling a small number of cases in a county or district.

While district attorney offices occasionally handle conflict cases from their peer offices, it is rare. Because district attorneys do not represent individual clients, they do not encounter the same ethical constraints as defenders. Furthermore, unlike public defender offices, district attorney offices do not maintain rosters of private prosecutors to whom they can easily transfer responsibilities for representation.

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.

### C. Conflict Tracking

In October 2013, Indigent Defense Services (IDS) updated its online disposition database, enabling public defender offices to effectively monitor conflicts and cases assigned outside their jurisdictions. Offices were able to input, categorized by case type, the number of cases they:

- Reassign to private assigned counsel (PAC) due to case-specific conflicts, workload challenges, or other practical considerations; or
- Transfer to other public defender offices.

In late 2023, this tracking system unexpectedly malfunctioned, prompting IDS to develop a new system for tracking dispositions and conflicts, which is discussed in greater detail in Section III.C.

It is important to note that public defender offices often lack awareness of conflict assignments made directly from the courtroom.

### **III. FY 2023-24 Conflict of Interest and Assignments to Private Counsel**

#### **A. Assignments to Private Counsel**

In FY 2023-24, public defender offices reported a total of 19,331 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 FY2023-24.

#### **B. Assignments to Other Public Defender Offices**

In past years, interoffice transfers were used to get coverage when local counsel was not available and not to provide cost efficiencies. Other than conflict units attached to offices, it is not clear that public defender offices covering other offices' conflicts would be cost efficient. While there may be merit in having public defender offices address the needs of adjacent districts, the expense incurred by sending a public defender attorney to another district for a single case may exceed the cost of assigning local PAC.

#### **C. Conflict Tracking**

Throughout FY 2023-2024, public defender offices employed two distinct technologies to monitor their dispositions and conflicts. The first was the online database established in 2013. The second was a newly developed website.

IDS transitioned to the website technology due to the technological difficulties encountered with the database method, which rendered it unusable for public defenders. This technological breakdown was unforeseen, leaving IDS with limited time and

resources to create an alternative solution. The shift to the website platform represented a significant change for public defender offices, necessitating an adjustment period. Unfortunately, during the transition from the old system to the new, some conflict data were lost, resulting in reported figures that differed from expectations based on previous years.

- reassigned to PAC/MAC because of conflicts or other practical reasons;
- transferred to other public defender offices.

It should be noted that the information entered in the online database may differ from the official court record since offices often do not know when conflict assignments are made from the courtroom. Additionally, conflict tracking is a manual process and is subject to error.

Since January 1, 2024, eight new offices (Districts 43, 32, 30, 15, 17, 13, 05, and 07) have been opened, significantly expanding operations. However, as a result of this rapid growth, the disposition and conflict numbers stand out as being relatively low. This discrepancy is due to the offices still being in the initial phase of handling cases, leading to fewer cases resolved and conflicts compared to more established locations.

## Appendix A

### Cases reassigned to private counsel FY2023-24.

<b>Public Defender District</b>	<b>DISPOSITIONS</b>	<b>CONFLICTS</b>
01: Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	1,157	99
02: Beaufort, Hyde, Martin, Tyrrell, Washington	997	1,144
03: Pitt	3,068	1,323
04: Carteret, Craven, Pamlico	1,117	568
06: New Hanover, Pender	5,539	495
07: Bertie, Halifax, Hertford, Northampton	4	-
10: Wake	7,706	2,242
14: Cumberland	2,018	735
15: Bladen, Brunswick, Columbus	285	1,000
16: Durham	4,354	431
17: Alamance	467	128
18: Chatham, Orange	1,948	274
20: Robeson	1,395	1,625
21: Hoke, Scotland	1,583	220
24: Guilford - Highpoint, Greensboro	5,717	1,481
26: Mecklenburg	13,969	5,277
30: Union	200	50
31: Forsyth	4,214	381
38: Gaston	2,874	175
39: Cleveland, Lincoln	4,286	326
40: Buncombe	2,060	443
41: McDowell, Rutherford	3,736	8
42: Henderson, Polk, Transylvania	1,843	794
43: Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain	197	112

