

# REQUESTS FOR PROPOSALS & CONTRACTS

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IDS PRESENTATION TO  
HOUSE COMMITTEE ON JUDICIAL EFFICIENCY AND EFFECTIVE ADMINISTRATION OF JUSTICE

Presented by Thomas K. Maher, IDS Executive Director

&

W. James Payne, IDS Commission Chair

January 23, 2014

# This Presentation Will Cover:

- 2011 and 2013 Legislation Requiring Requests for Proposals (RFPs) and Contracts and an Overview of IDS' Contract System
- Implementation of RFPs and Contracts to Date
- Benefits of Contract System
- Challenges of Contract System
- Next Steps for Contract System
- Importance of Adequate Funding of Indigent Defense

# 2011 & 2013 LEGISLATION

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## § 18A.4 of Session Law 2013-360

- [IDS] shall issue a request for proposals from private law firms or not-for-profit legal representation organizations for the provision of **all classes of legal cases** for indigent clients **in all judicial districts**. . . . In cases where the proposed contract can provide representation services **more efficiently than current costs and ensure that the quality of representation is sufficient to meet applicable constitutional and statutory standards**, [IDS] shall use private assigned counsel funds to enter into contracts for this purpose. In selecting contracts, the Office of Indigent Defense Services shall consider the cost-effectiveness of the proposed contract. Disputes regarding the ability of the potential contractor to provide effective representation for clients served by the contract shall be determined by the senior resident superior court judge for the district.
- *Prior version of special provision was in § 15.16(c) of Session Law 2011-145, as amended by § 39 of Session Law 2011-391*

# The Special Provision

- The special provision directs IDS to:
  - Issue RFPs for all classes of indigent cases
  - Issue RFPs in all districts
  - Consider both cost and quality
- Intended to shift case-by-case PAC roster system to large-scale contract system

# Goals of Contract System

- Contain costs and increase predictability of IDS' budget
- Identify most qualified attorneys and provide them with resources, training, and support
- Capture reliable data to allow IDS staff to monitor case assignments and dispositions, and to allow General Assembly and IDS Commission to make informed decisions about resource allocation

# “Caseload Units”

- IDS offers caseload units to interested attorneys, law firms, and non-profits
- One caseload unit represents a range of cases that, based on statewide averages, will take approximately 20% of one attorney’s billable time (or approximately 360 billable hours per year)
- Actual amount of time spent will depend on actual case assignments and efficiency of contractors and courts
- RFPs specify number of units available in a county for each contract category – *e.g.*, adult misdemeanors, low-level felonies, and high-level felonies

# 20% Units

- IDS evaluates:
  - Each county's caseload – to calculate the approximate number of 20% units required to cover cases
  - Court schedules – to determine the number of different attorneys needed and, thus, the maximum number of units that can be concentrated in any one attorney
- Individual attorneys, law firms, and non-profits are free to offer to handle:
  - Up to 5 units per attorney (if court schedules can be covered and there are a sufficient number of contractors to handle each other's conflict cases)



# How Many Cases?

- RFPs include range of annual disposed cases that each unit will represent

Contract Category	Minimum Annual Disps	Maximum Annual Disps
Misdemeanor	102	124
Low-Level Felony	56	68
High-Level Felony	21	25

- Actual number of cases disposed by a contractor may fall anywhere within that range
- Contractors can decline additional appointments or renegotiate the amount of compensation if they hit the top end of the range

# Different Than Roster System

- Unlike case-by-case PAC rosters:
  - Two-year contracts (with option to renew)
  - Contractors expected to handle their range of cases during contract period
  - Contractors must complete all assigned cases after contracts end
  - Contractors receive more regular payments, allowing for more predictable budgeting

# IMPLEMENTATION TO DATE

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# Staggered by Case Type

- RFPs issued to date have sought offers for adult non-capital criminal cases:
  - Adult misdemeanor
  - Adult low-level felony
  - Adult high-level felony
- And for some specialized per session courts, such as:
  - Drug Treatment Court
  - Mental Health Treatment Court
  - Truancy Court
  - Probation Violations in Wake County

# Staggered by Geography

- **RFP #12-0001:**

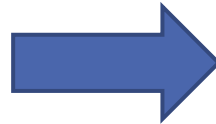
- District 9 (Franklin, Granville, Vance, Warren)
- District 10 (Wake)
- District 14 (Durham)



Contracts effective December 1, 2012

- **RFP #12-0002:**

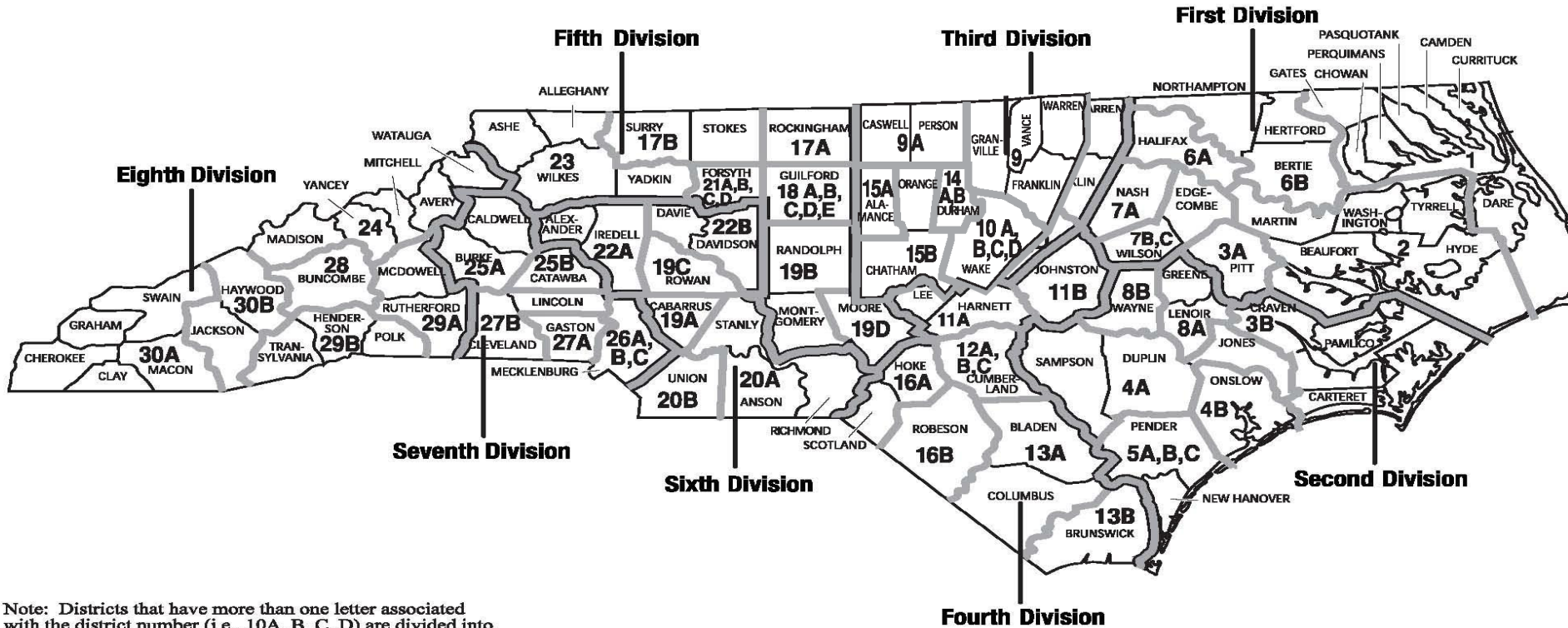
- District 9A (Caswell, Person)
- District 15A (Alamance)
- District 15B (Chatham, Orange)



Contracts effective June 1, 2013

# North Carolina Superior Court

## Effective January 15, 2009



Note: Districts that have more than one letter associated with the district number (i.e., 10A, B, C, D) are divided into separate districts for electoral purposes. For administrative purposes, they are combined into a single district.

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 The University of North Carolina at Chapel Hill

# Staggered by Geography

- **RFP #13-0001:**

- District 3A (Pitt)
- District 8A (Greene, Lenoir)
- District 8B (Wayne)
- District 11A (Harnett, Lee)
- District 11B (Johnston)



RFP issued November 4, 2013  
Offers due December 13, 2013  
Offers are currently being evaluated

# Scope of Change

- Implementation represents a fundamental change in the way indigent services are provided in NC
  - During FY11, more than 200,000 individual fee apps from more than 2,600 different PAC at a cost of approximately \$68.7 million
  - Now have more than 150 RFP contractors covering all adult criminal cases in the 3<sup>rd</sup> Judicial Division
  - Those contractors have reported more than 20,000 pending and disposed cases to date
  - RFP #13-0001 will expand into seven more counties in the 1<sup>st</sup>, 2<sup>nd</sup>, and 4<sup>th</sup> Judicial Divisions



# BENEFITS OF CONTRACT SYSTEM

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# 1. Online Case Reporting System

- IDS has developed an online reporting system that contractors use to:
  - Enter data about pending cases
  - Enter data about disposed cases
  - Track progress toward contractual obligations
  - Print prefilled recoupment applications to submit to judges in recoupment-eligible cases
  - Certify for monthly payment
- System will also enable IDS to conduct more nuanced data analysis and to report more nuanced data to the General Assembly



The North Carolina Court System  
Office of Indigent Defense Services

## Contractor Case Reporting System

If you are submitting a fee application for payment pursuant to a case-by-case appointment, do not use this system. This system can only be used to report contract cases and to print fee applications in contract cases for recoupment purposes.

### Please Log In

User Name:

Password:

☐ Remember me next time.

Log In

[Email me my password](#)

Contact IDS

Phone: (919) 354-7200

Website: [www.ncids.org](http://www.ncids.org)

# New Criminal Case Wizard

## [1: Newly Assigned Case Reporting](#)

## [2: Check Pending Cases](#)

## [2: Most Serious Offense](#)

## [3: Confirm & Finish](#)

## Newly Assigned Case Reporting

Contractor Internal File No. (Optional):

County:

< Please Choose ...> ▼

Client First Name:

Client Middle Name:

Client Last Name:

Client Suffix:

Client SSN (Last four digits only):

Client has No SSN OR unable to obtain after reasonable efforts:

☐

Client Street Address:

Client City:

Client State:


NC

Client Zip:

Attorney:

< Please Choose ...> ▼

Date Appointed:

Primary File No:

Next

Cancel

# Criminal Case Wizard

## Case 341234: Testing, Jojo

- [1. Update Newly Assigned Case Reporting](#)
- [2. Set/Change Most Serious Offense](#)
- [3. Disposed and Withdrawn Case Reporting](#)
- [4. Set/Change Judge](#)
- [5. Add Additional File Numbers](#)
- [6. Confirm & Finish](#)

### Set/Change Most Serious Offense

Primary File No:

Most Serious Class of Offense:

Most Serious Offense:

Other Offense (if not found in list below):

Attempt/Conspiracy/Solicitation/Accessory After the Fact?

If you would like to set or change the most serious offense for this case, please select it from the list below.

#### Search Fields

Offense Description Contains:

General Statute Number:

	GS No.	Offense Description	Offense Type	Offense Class	Effective Date
<a href="#">Select</a>	14-54	BREAKING/ENTERING AND LARCENY	F	—	
<a href="#">Select</a>	14-72(B)	BREAKING/ENTERING AND LARCENY	F	—	
<a href="#">Select</a>	14-72(B) (6)	HABITUAL LARCENY	F	H	12/1/2012
<a href="#">Select</a>	14-72.11 (2)	LARCENY REMOVE/DESTROY/DEACTIVATE CONTROL DEVICE	F	H	12/1/2007
<a href="#">Select</a>	14-72(A)	FELONY LARCENY - >\$400	F	—	
<a href="#">Select</a>	14-72(A)	FELONY LARCENY	F	H	
<a href="#">Select</a>	14-72(A)	MISDEMEANOR LARCENY	M	1	
<a href="#">Select</a>	14-72	LARCENY BY TRICK	F	—	
<a href="#">Select</a>	14-72(B)	LARCENY OF A FIREARM	F	H	
<a href="#">Select</a>	14-72(A)	LARCENY BY TRICK	M	—	

Show Page: 1 [2](#) [3](#) [4](#) (Total Records: 35)

Records Per Page: 10

Offense "BREAKING/ENTERING AND LARCENY" selected

# Criminal Case Wizard

Case 2013CR051285: Johnson, Christopher Jesse

[1. Update Newly Assigned Case Reporting](#)

[2. Set/Change Most Serious Offense](#)

[3. Disposed and Withdrawn Case Reporting](#)

[4. Set/Change Judge](#)

[5. Add Additional File Numbers](#)

[6. Confirm & Finish](#)

## Disposed and Withdrawn Case Reporting

Withdrawn Before Substantive Work - No Case Credit:

*If you check this box, then you do not need to complete any additional fields on this page.*

☐

Client SSN (Last four digits only):

0410

Client has No SSN OR unable to obtain after reasonable efforts:

☐

Client Street Address:

203 Elbert Johnson Road

Client City:

Siler City

Client State:

NC

Client Zip:

27344

Date First Client Interview:



Method First Client Interview:

< Please Choose ...>

Court Type at Disposition:

< Please Choose ...>

*Check here if you were appointed to represent this defendant in another case(s) at the time of the appointment to this case(s) and you already submitted a fee application for that case(s) in which the attorney appointment fee was charged.*

☐

Disposition:

< Please Choose ...>

If "Other", please explain:

Most Serious Judgment & Sentencing:

< Please Choose ...>

If "Other" please explain:

Disposition Date:



Time In Court:

0.00

Time Waiting In Court:

0.00

Time Out Of Court:

0.00

Total Time:

0.00

Previous

Next

Cancel

# Criminal Case Wizard

## Case 2013CR051285: Johnson, Christopher Jesse

- [1. Update Newly Assigned Case Reporting](#)
- [2. Set/Change Most Serious Offense](#)
- [3. Disposed and Withdrawn Case Reporting](#)
- [4. Set/Change Judge](#)**
- [5. Add Additional File Numbers](#)
- [6. Confirm & Finish](#)

### Set/Change Judge

Judge:

Other Judge (if not found in list below):

*If you would like to set or change the judge for this case, please select them from the list below.*

Search Fields

Last Name:

Find Now

First Name:

New Search

	Judge Last Name	Judge First Name	Title	Division Id	District Id	Court
<a href="#">Select</a>	Abernathy	George	Judge District Court			Jb District Court 15a
<a href="#">Select</a>	Abernethy	Richard	Judge District Court			Jb District Court 27a
<a href="#">Select</a>	Adams	Gale M.	Superior Court Judge			Jb Superior Court 12
<a href="#">Select</a>	Albright	R. Stuart	Superior Court Judge			Jb Superior Court 18
<a href="#">Select</a>	Alexander	Karen	Judge District Court			Jb District Court 3b
<a href="#">Select</a>	Alford	Benjamin	Senior Resident Superior Court Judge			Jb Superior Court 3b
<a href="#">Select</a>	Allen	Bradley	Judge District Court			Jb District Court 15a
<a href="#">Select</a>	Allen	Jasper	Senior Resident Superior Court Judge			Jb Superior Court 15a
<a href="#">Select</a>	Allen	Stanley	Judge District Court			Jb District Court 17a
<a href="#">Select</a>	Alloway	Sherry	Judge District Court			Jb District Court 18

Show Page: 1 [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#) ... (Total Records: 428)

Records Per Page: 10 ▼

Previous

Next

Cancel



ers Contracts Contract Positions **Cases**

Search Fields

Attorney First Name:

Attorney Last Name:

Contract Category:

County:

Client First Name:

Client Last Name:

Disposition Date Between:  And

Case Status:

Find Now

New Search

5 Matching Records

Select	Delete	Recoupment	Recoupment Eligible?	Printed?	Mark As Printed	Looked?	Contractor File No.	Case Age	Contract Category	Attorney	County	Client	Primary File No.	Most Serious Offense	Total Hrs to Date	Disposition Date	Case Credits	Withdraw No Subst. Work
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes					Adult Misdemeanor	Simpson, Lisa	Dare	Mumford, Marcus Mumford	TEST	ASSAULT HANDICAPPED PERSON	15.00	6/25/2013	0.5	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes					Adult Misdemeanor	Simpson, Lisa	Dare	Simms, John	45352	PATIENT ABUSE AND NEGLECT (M)	1.50	5/12/2013	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes					Adult Misdemeanor	Simpson, Lisa	Dare	Thumb, Tom	95704895	FAIL REGISTER SEX OFFENDER (M)	2.00	6/3/2013	0.5	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>	Yes	Yes					Adult Misdemeanor	Simpson, Lisa	Dare	Hannah, Keith	12or703314	POSS MARIJUANA >1/2 TO 1 1/2 OZ	5.00	5/2/2013	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes					Adult Misdemeanor	Simpson, Lisa	Dare	Mooney, Robert Allen	13 or 51294	DOMESTIC CRIMINAL TRESPASS(M)	3.50	4/24/2013	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes			sp1		Adult Misdemeanor	Simpson, Lisa	Dare	Richardson, Devon M.	13 or 1640	MISDEMEANOR PROBATION VIOLATION	3.00	3/1/2013	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes			sp2		Adult Misdemeanor	Simpson, Lisa	Dare	Lomax, Velma R.	12 Cr 57678	INJURY TO PERSONAL PROPERTY	0.00		0	Yes
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes			sp3		Adult Misdemeanor	Simpson, Lisa	Dare	Davis, Alexis	11 or 64330	EMBEZZLEMENT	8.50	4/23/2012	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes			sp3		Adult Misdemeanor	Simpson, Lisa	Dare	Davis, Alexis	11 or 64330	EMBEZZLEMENT	8.50	4/23/2013	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>	Yes	Yes			sp4		Adult Misdemeanor	Simpson, Lisa	Dare	Smith, Anthony	13 CR 56514	CONSUME ALCOHOL BY <19	4.25	2/12/2013	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>	Yes	Yes			sp4		Adult Misdemeanor	Simpson, Lisa	Dare	Smith, Anthony	FILE #1	TRESPASS ON POSTED PROPERTY	4.25	2/12/2013	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>	Yes	Yes			sp4		Adult Misdemeanor	Simpson, Lisa	Dare	Smith, Anthony	13 or 56514	TRESPASS ON POSTED PROPERTY	4.25	2/12/2013	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		No	<a href="#">Mark As Printed</a>			193	Adult Misdemeanor	Simpson, Lisa	Dare	Maher, Thomas K	13or123	DRIVING WHILE LICENSE REVOKED (DWLR)	0.00			No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes					Adult Misdemeanor	Simpson, Lisa	Dare	John, Jimmy	12 CrS 1122	DRIVING WHILE IMPAIRED (DWI)	0.00		0	Yes
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		No	<a href="#">Mark As Printed</a>				Adult Misdemeanor	Simpson, Lisa	Dare	Tom, John	12 CRS 222	DRIVING WHILE IMPAIRED (DWI)	0.00		0	Yes
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes			TEST-0624A	169	Adult Misdemeanor	Simpson, Lisa	Dare	Testing, Jojo	341234	MURDER OF AN UNBORN CHILD	0.00			No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes			TEST-0624B	169	Adult Misdemeanor	Simpson, Lisa	Dare	Testing, B	23141234	MURDER OF AN UNBORN CHILD	0.00			No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>	Yes	Yes					Adult Misdemeanor	Simpson, Lisa	Dare	test, test	12241	VOLUNTARY MANSLAUGHTER UNBORN C	1.00	7/1/2013	1	No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>		Yes				151	Adult Misdemeanor	Simpson, Lisa	Dare	Johnson, Christopher Jesse	2013CR05128	ASSAULT ON A FEMALE	0.00			No
<a href="#">Select</a>	<a href="#">Delete</a>	<a href="#">Print</a>	Yes	Yes			12-45BF		Adult Misdemeanor	Simpson, Lisa	Dare	James, John	12 CrS 2345	POSSESSION OF BURGLARY TOOLS	2.00	1/13/2013	0.5	No

Export Case Data



To print a recoupment form for this case, fill in the client's SSN number and then click the "Download CR-225 PDF" button.

Client SSN:  -  - 2345

Default File Name: 12 CrS 2345\_James\_John.pdf

Download CR-225 PDF

Close

# FOR RECOUPMENT ONLY

<b>STATE OF NORTH CAROLINA</b>		In The General Court Of Justice <input checked="" type="checkbox"/> District Court Division <input type="checkbox"/> Superior Court Division		File No. <b>12 CrS 2345</b>	Additional File Nos.	Provide all case numbers resolved on the same day in the same court before the same judge.		
Dare County		Name And Address Of Indigent Client John James  NC		<b>NON-CAPITAL CRIMINAL CASE TRIAL LEVEL JUDGMENT AGAINST INDIGENT (Contractor Cases Only)</b>  G.S. Ch. 7A, Art. 36; G.S. 122C-268(d), -268(d)				
Date Attorney Appointed 12/12/2012		Full Social Security No. (required by G.S. 7A-466(d)) -- 2345					Has No Social Security No. Or Unable To Obtain	
NOTE: Use this form ONLY for non-capital criminal cases at the trial level - i.e. only for cases with a CR or CRS case caption. DO NOT use this form for non-capital cases at the trial level, potentially capital cases at the trial level, appeals to the Court of Appeals or Supreme Court, or capital post-conviction cases.		INSTRUCTIONS: Applicant completes and signs all applicable portions of <u>Section I</u> . In any case that is recoupment-eligible, the trial judge completes <u>Sections II and III</u> and signs <u>Section IV</u> to fix value of services and enter the appropriate judgments. If no judgments are to be entered, the trial judge must so indicate in <u>Section III</u> .						
<b>I. APPLICATION</b>								
I, the undersigned IDS contract counsel make application for determination of value of services rendered for the indigent. I certify that this information is correct to the best of my knowledge.								
<b>MOST SERIOUS ORIGINAL CHARGE AND MOST SERIOUS DISPOSITION</b>								
1. Original Charge (most serious offense) Misdemeanor 2 POSSESSION OF BURGLARY TOOLS		2. Disposition (most serious disposition) None (Attorney Withdrew Other)		3. Judgment & Sentencing (most serious) None (Attorney Withdrew)				
<b>FINAL FEES ONLY:</b>		Disposition Date 1/13/2013		<input type="checkbox"/> Check here if you were appointed to represent this defendant in another case(s) at the time of the appointment to this case(s) and you already submitted a fee application for that case(s) in which the attorney appointment fee was charged.				
<b>COMPLETE FOR THIS FEE:</b>		Start Date Work This Fee Request 12/12/2012		End Date Work This Fee Request 1/13/2013		Date First Client Interview 12/14/2013		
Times must be reported in decimals, not minutes.		Name Of Judge Setting Value Of Services Honorable Robert Ervin		Time In Court 1.50	Time In Court Waiting 0.00	Time Out Of Court 0.50		
				Total Time Claimed This Fee 2.00				
NOTE: In contract cases, the applicant is always the individual assigned attorney.								
Name Of Applicant Simpson, Lisa		Address 101 Main Street Durham, NC 27701						
Telephone No. work phone 1	Email Address Susan.D.Perry@nccourts.org	Date 12/10/2013		Signature Of Applicant				
<b>II. ORDER TO FIX VALUE OF SERVICES</b>								
Based on the Findings of Fact set out in Section III, the Court ORDERS that the "Total Amount" stated on Line 2 below be fixed as the value of legal services rendered by the applicant named above.								
1. Hours Approved By The Court				2.00				
2. Fees Allowed/Value Of Services Rendered				(Hours Approved x IDS Rate) = \$				



### Payment

*I certify that I have entered all data required by Section 6 of my contract with IDS—including, as applicable, newly assigned cases, disposed and withdrawn cases, substantive hearings, and/or sessions—for the time period required by my contract. I further certify that I have submitted or will submit recoupment applications to the presiding judge in all recoupment-eligible cases.*

Period Start Date: 7/1/2013

Certified Complete: No

Date Certified:

Certified By:

Session Payment Amount:

Scheduled Payment Amount: 1458.33

+ Total Extraordinary Amount:

- Penalties & Adjustments:

Calculated Payment Amount:

Approved Payment Amount:

Approved by IDS: No

Release Date:

### Extraordinary Amounts

No extraordinary amounts have been added to this payment.

### Penalties & Adjustments

No penalties or payment adjustments have been deducted from this payment.

# “Exceptions Reports”

- Online system allows IDS staff to run “exceptions reports,” which are pre-developed queries that help IDS oversee and manage contracts:
  - *e.g.*, Possible data reporting problems, such as potential duplicate pending or disposed entries
  - *e.g.*, System administration, such as comparing contractors’ pending and disposed caseloads to where IDS would expect them to be at that point in time
  - *e.g.*, Monitor recoupment efforts, such as whether recoupment forms have been printed in recoupment-eligible cases
  - *e.g.*, Quality measures, such as an unusually high percentage of cases ending in pleas of guilty to highest offense charged

## 2. Cost Containment

- For most case types, IDS has set monthly per unit fees
  - Pay covers attorney time and routine expenses
  - Amount of pay is set forth in RFPs
- Set per unit prices are based on several years of case and time data, and are designed to be cost-effective compared to current PAC hourly rates
- Setting per unit prices allows IDS to:
  - Ensure uniformity across the state and avoid the problems that would arise if IDS paid different attorneys different amounts for the same work
  - Minimize logistical problems associated with paying widely varying amounts to contractors
  - Eliminate risk of price bids that are so high that IDS cannot afford to contract with competent counsel
  - Eliminate risk of price bids that are so low and unrealistic that quality of representation cannot meet constitutional and statutory standards

# Example of Per Case Costs

Contract Category	FY13 PAC Per Case Avg	Contractor Per Unit Min Annual Disps	Contractor Per Case Avg at Min Disps	% Savings (excluding extraordinary pay)
Misdemeanor	\$190.94	102	\$171.57	10%
Low-Level Felony	\$376.10	56	\$348.21	7%
High-Level Felony	\$1,253.70	21	\$1,119.05	11%

- If contractors exceed their minimum dispositions, the savings will be greater
- % savings excludes extraordinary pay

# Adjustments Based on Caseload or an Exceptional Case/Expense

- Contracts allow for adjustments in pay if actual number of disposed cases is significantly higher or lower than projected
- Contracts also include provisions governing extraordinary cases and extraordinary expenses
  - If a contractor gets a complex case that takes an extraordinary amount of time, the contractor can apply to IDS for additional pay or a reduction in his or her caseload
  - If a contractor incurs extraordinary out-of-pocket expenses in a case, the contractor can also seek reimbursement

# Treatment Courts and Price Bids

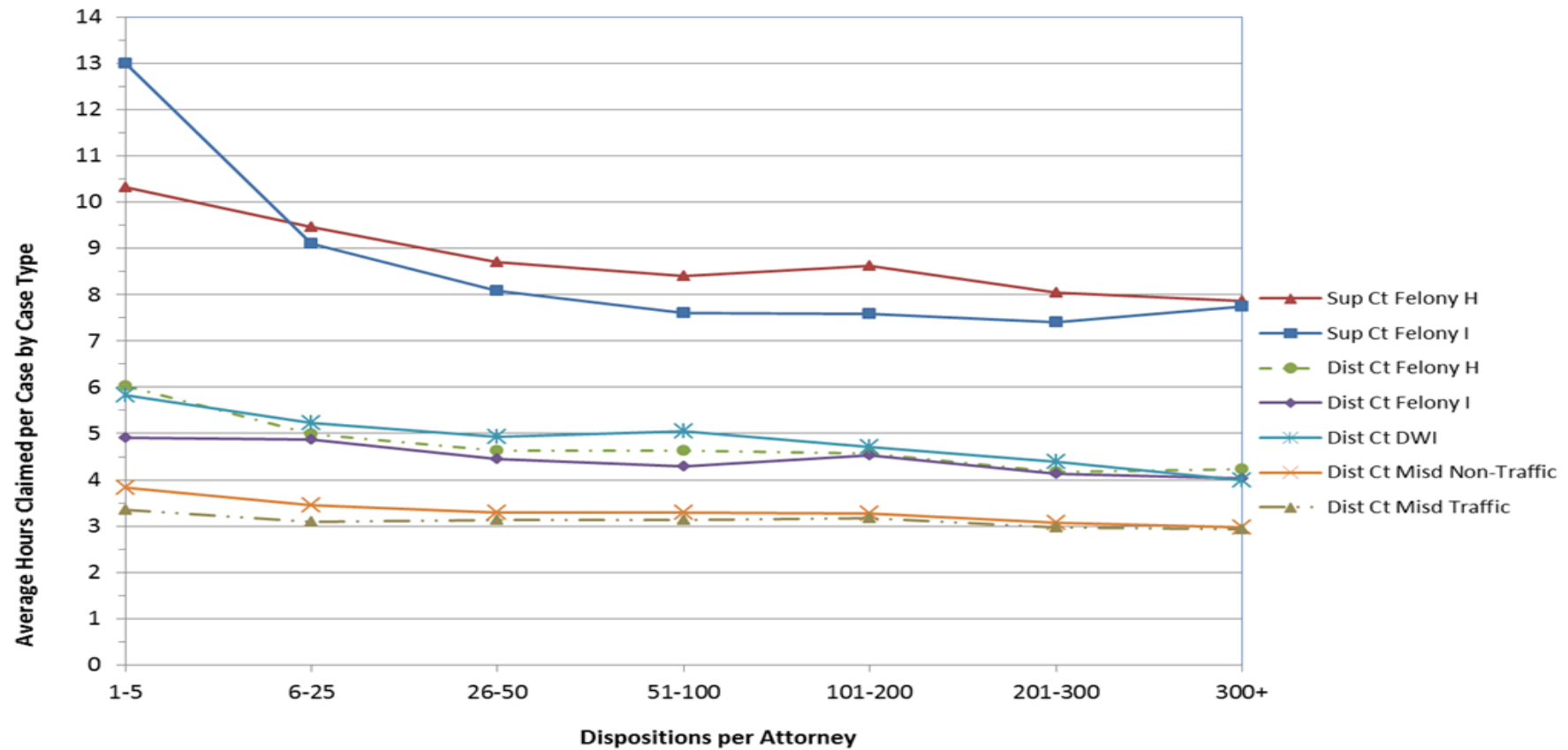
- IDS is experimenting with seeking price bids for certain types of cases handled on a per session basis (*e.g.*, drug treatment court and Wake County probation violations)
- Easier to predict amount of time required for cases handled on a per session basis and more difficult to cut corners on the representation

### 3. Maximize Efficiencies

- Because the caseload is spread across fewer attorneys and contractors are guaranteed a certain volume of indigent cases, they should be able to develop efficiencies that benefit them, IDS, and the courts
  - *e.g.*, If the caseload is concentrated in fewer attorneys, contractors have more cases on the docket each day and less per-case waiting time
- IDS research shows that attorneys who have more dispositions claim less time per case



**FY12 Average Hours per Case by Dispositions per Attorney per County:  
Selected Case Types by Charge and Court**



Source: NC Office of Indigent Defense Services, Research Department, April 28, 2013.

## 4. Reduced Clerical Work

- Online system is allowing IDS to move away from current paper-based and labor-intensive systems for reporting case data and getting paid
- Because contractors are not paid on a case-by-case basis through fee applications:
  - Clerks and judges have to handle far less paper (recoupment applications only)
  - IDS fiscal staff do not have to key as many individual payments into the state accounting system

## 5. Steady Pay for Contractors

- Contractors are guaranteed a steady monthly paycheck for a set volume of cases
- Because IDS knows the exact amount of contractual pay each month, we can set aside money to pay contractors even if funding for individual fee applications has been depleted before the end of the fiscal year

## 6. IDS Support of Contractors

- 1 full-time Contracts Administrator to manage business aspects of system (*e.g.*, ensure data is reported correctly and manage monthly payments)
- Ultimately, 4 new Regional Defenders with each serving 2 Judicial Divisions
- Role of Regional Defenders is to:
  - Provide oversight, training, and support for contractors to help ensure they are providing quality representation
  - Develop materials to help contractors provide quality and efficient services (*e.g.*, checklists)
  - Help local court officials and clients resolve any problems

## 7. Local Input Without Compromising Independence of Defense

- IDS seeks references from local district and superior court judges about all offerors
- Offerors can also list other court system actors as references
- Reference process helps IDS identify best local attorneys without compromising independence of defense function by over-involving the judiciary in the selection of contractors

# CHALLENGES OF CONTRACT SYSTEM

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# 1. Savings Not Immediately Realized

- Contract system will not generate immediate savings because IDS will continue to pay older PAC fee applications at the hourly rates at the same time we are issuing up-front contractual payments
- Savings will be realized when the lower per unit contractor fees are greater than the roll-out costs of paying contractors up-front before cases are disposed

## 2. Recoupment Reductions

- Contract system will likely lead to decreased recoupment revenues for a number of reasons:
  - If system leads to increased efficiencies and contractors spend less time per case, there will be less recoupment in each individual case
  - Contractors have less incentive to track and report their hours accurately when they are not being paid by the hour



### 3. System Less Flexible than PAC Rosters

- Any contract system requires IDS to project caseloads in advance so we know how many cases we expect and how many contractors we need
- It is somewhat more difficult to adjust a contract system for significant changes in caseloads due to:
  - Unexpected increases in crime
  - Reductions in need for appointed counsel due to changes in law (*e.g.*, Class 3 misdemeanor reclassification)
- IDS deals with this by being conservative in projections and contracting for lower end of anticipated caseload range in a county
  - Easier to add contract coverage later than ask contractors to refund payments

## 4. Nurturing Next Generation

- More challenging for inexperienced solo practitioners to get contracts because more experienced attorneys generally in better position to show qualifications
- But old system of hanging a shingle and learning through real clients is not the best model
- IDS is working to address this challenge:
  - *e.g.*, Encouraging local mentoring relationships, and allowing inexperienced attorneys to submit mentoring agreements with more experienced members of local bar

# NEXT STEPS FOR IMPROVING AND EXPANDING CONTRACT SYSTEM

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# Next Steps to Improve System

- IDS presented about the contract system to JPS Oversight Committee in December 2013, and members expressed concerns about whether the system provides enough resources to attorneys to ensure quality representation in very serious cases
- Some legislators have also expressed concerns about building and nurturing next generation of defense attorneys within this new system
- To address those concerns:
  - IDS respectfully requests that the General Assembly enact a minor change to the special provision during the upcoming short session; and
  - IDS is in the process of making internal adjustments that do not require legislative change

# Requested Legislative Change

- Exempt the most complex case types (*i.e.*, potentially capital cases at the trial level, direct appeals, and post-conviction) from the special provision
- [IDS] shall issue a request for proposals from private law firms or not-for-profit legal representation organizations for the provision of all classes of legal cases for indigent clients in all judicial districts, with the exception of potentially capital cases at the trial level, direct appeals to the Appellate Division, and post-conviction proceedings.  
... In cases where the proposed contract can provide representation services more efficiently than current costs and ensure that the quality of representation is sufficient to meet applicable constitutional and statutory standards, [IDS] shall use private assigned counsel funds to enter into contracts for this purpose. In selecting contracts, the Office of Indigent Defense Services shall consider the cost-effectiveness of the proposed contract. Disputes regarding the ability of the potential contractor to provide effective representation for clients served by the contract shall be determined by the senior resident superior court judge for the district.

# High-Level Felonies

- While JPS Oversight Committee members also expressed concerns about high-level felonies, IDS believes they should remain part of the contract system:
  - Approximately 750 non-capital Class A, B<sub>1</sub>, and B<sub>2</sub> felonies each year (an average of 7 to 8 in each county)
    - Difficult to maintain a local roster system for such a small volume of cases
    - Cannot guarantee that roster attorneys would get enough cases to justify keeping up with the law and maintaining their skills
  - IDS is better able to provide support to a smaller pool of contractors

# IDS Changes to Contract System for High-Level Felonies

- Expand and make more concrete existing provision allowing extraordinary pay for high-level felonies
  - Once a contractor hits a certain threshold number of hours, contractor will consult with Regional Defender, who may give advance approval for additional hourly compensation for time above the threshold
  - Based on IDS' preliminary data review, this change will decrease the projected savings from high-level felony contracts by approximately \$400,000 per year
  - But it will more clearly define what constitutes "extraordinary" and will alleviate concerns about the resources available to a contractor with a very difficult case

# Nurturing the Next Generation

- Exploring special “second chair” initiative:
  - *e.g.*, Allow new attorneys to apply for “second chair” list and get matched with felony trials for a discounted hourly fee
  - *e.g.*, Misdemeanor contractors could serve as second chair on felony cases and get case credit toward their misdemeanor contract
  - *e.g.*, Low-level felony contractors could serve as second chair on high-level felony cases and get case credit toward their low-level felony contract
- Idea is to give younger attorneys hands on learning opportunities and to provide additional support to contractors handling felony cases



# Next Steps to Expand System

- Complete coverage of adult criminal cases in Judicial Divisions 1 through 4
- Move to remaining Judicial Divisions for same case types
- Pilot test more specialized contracts, such as impaired driving contracts
- Analyze existing case data and add features to online reporting system for non-criminal case types, such as abuse/neglect/dependency and juvenile delinquency

# IMPORTANCE OF ADEQUATE FUNDING FOR INDIGENT DEFENSE

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# Fulfilling *Gideon's* Promise



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**CRIMINAL DEFENSE LAWYER**  
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**WILMINGTON, NC 28405**  
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- Appointed by IDS Commission itself for a term from September 2011 through August 2015
- Elected to serve as Commission Chair from September 2012 through August 2014

# Fulfilling *Gideon's* Promise

- IDS' current PAC hourly rates are unsustainably low and per unit contract fees are even lower
  - Contractors must be 10% more efficient to earn same effective hourly rate as PAC (without accounting for extraordinary pay)
- Difficult to impossible to cover overhead and sustain small business at those rates
- Not operating within healthy economic market, so adding price bidding to mix would wreak havoc on integrity of criminal justice system
- Need to increase compensation over time to ensure North Carolina is meeting constitutional mandate of *Gideon v. Wainwright*, 372 U.S. 335 (1963)

# The Cost of Breaking *Gideon's* Promise

- Long-term costs of underfunding indigent defense:
  - More costly to fix errors on back end through expensive appeals and post-conviction proceedings
  - Increased incarceration costs
  - Constitutional challenges :
    - *Wilbur v. City of Mount Vernon*, No. C11-1100RSL, 2013 U.S. Dist. LEXIS 171187 (W.D. Wash. Dec. 4, 2103) (granting injunctive relief in challenge to constitutional adequacy of contract system for indigent defense)
    - *Arizona v. Smith*, 681 P.2d 1374 (Ariz. 1984) (holding that Mohave County's low-bid contract system violated constitutional rights of defendants)
    - *New Mexico v. Young*, 172 P.3d 138 (N.M. 2007) (presuming ineffective assistance of counsel due to inadequate flat fee contract in capital case and staying state's ability to seek death penalty unless and until additional funds were made available)
    - *Simmons v. State Public Defender*, 791 N.W.2d 69 (Iowa S. Ct. 2010) (construing contract for indigent representation as not placing hard cap on compensation to avoid construction that would undermine effective assistance of counsel, observing that "the cases see a linkage between compensation and the provision of effective assistance of counsel")
    - *Jewell v. Maynard*, 383 S.E.2d 536, 544 (W. Va. 1989) (concluding that it is unrealistic to expect appointed counsel to remain "insulated from the economic reality of losing money each hour they work")