

Law Enforcement and Criminal Justice Subcommittee Meeting

October 9, 2018 - SCCID

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AGENDA

**South Carolina
House of Representatives**



Legislative Oversight Committee

LAW ENFORCEMENT AND CRIMINAL JUSTICE SUBCOMMITTEE

Chairman Edward R. Tallon Sr.

The Honorable Katherine E. (Katie) Arrington

The Honorable William M. (Bill) Hixon

The Honorable Jeffrey E. (Jeff) Johnson

Tuesday, October 9, 2018

11:00am

Room 511 - Blatt Building

Pursuant to Committee Rule 6.8, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.

AGENDA

- I. Approval of Meeting Minutes**
- II. Discussion of the study of the Commission on Indigent Defense, including tour of agency, which is located in Suite 401 in the building at 1330 Lady Street, at approximately 1:00 p.m.**
- III. Adjournment**

MEETING MINUTES

Chair Wm. Weston J. Newton

First Vice-Chair:
Laurie Slade Funderburk

Legislative Oversight Committee



Katherine E. (Katie) Arrington
William K. (Bill) Bowers
Neal A. Collins
MaryGail K. Douglas
William M. (Bill) Hixon
Jeffrey E. (Jeff) Johnson
Robert L. Ridgeway, III
Bill Taylor
John Taliaferro (Jay) West, IV

Bruce W. Bannister
Gary E. Clary
Chandra E. Dillard
Phyllis J. Henderson
Joseph H. Jefferson, Jr.
Mandy Powers Norrell
Tommy M. Stringer
Edward R. Tallon, Sr.
Robert Q. Williams

South Carolina House of Representatives

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Law Enforcement and Criminal Justice Subcommittee

Tuesday, September 18, 2018

11:00 am

Blatt Room 511

Archived Video Available

- I. Pursuant to House Legislative Oversight Committee Rule 6.8, South Carolina ETV was allowed access for streaming the meeting. You may access an archived video of this meeting by visiting the South Carolina General Assembly's website (<http://www.scstatehouse.gov>) and clicking on *Committee Postings and Reports*, then under *House Standing Committees* click on *Legislative Oversight*. Then, click on *Video Archives* for a listing of archived videos for the Committee.

Attendance

- I. The Law Enforcement and Criminal Justice Subcommittee meeting was called to order by Chairman Edward R. Tallon, Sr., on Tuesday, September 18, 2018, in Room 511 of the Blatt Building. All members of the Subcommittee, except Representative Katie Arrington, were present for either all or a portion of the meeting.

Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not have to be verbatim accounts of meetings. It is the practice of the Legislative Oversight Committee to provide minutes for its subcommittee meetings.
- II. Representative Hixon makes a motion to approve the meeting minutes from the prior Subcommittee meetings.

Rep. Hixon's motion to approve the minutes from the August 28, 2018, meeting:	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Discussion of the Prosecution Coordination Commission

- I. Subcommittee Chairman Tallon explains a purpose of the meeting today is for the agency to present its internal and law recommendations, and then address any questions and/or motions from members on topics discussed during prior meetings with the agency.
- II. Subcommittee Chairman Tallon reminds those sworn in during prior meetings that they remain under oath.
- III. Ms. Lisa Catalanotto, Executive Director of the S.C. Commission on Prosecution Coordination, testifies about the agency's internal and law recommendations.
- IV. Members ask questions related to the following topics:
 - a. General responsibilities;
 - b. Agency website;
 - c. Performance;
 - d. Employees;
 - e. Court docket;
 - f. Diversion programs;
 - g. Case management software; and
 - h. Solicitor discussions with law enforcement;

Ms. Catalanotto and Fifth Circuit Solicitor Isaac McDuffie Stone, Chair of the S.C. Commission on Prosecution Coordination, answer the questions.

- V. Subcommittee members make various motions during the meeting, which are listed below. A roll call vote is held for these motions, and, among the members present, the motions pass unanimously.

Rep. Hixon's motion that the Subcommittee Study include a <u>recommendation</u> that the agency transfer state appropriations and funds to the sixteen circuit solicitors' offices electronically, instead of printing and mailing individual checks each quarter.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> , as requested by the agency in its law recommendation numbers one through fourteen, that the General Assembly consider repealing S.C. Code Sections 1-7-420 through 1-7-540, which discuss assistant solicitors and special investigators for individual circuits, as these statutes may no longer be necessary in light of Section 1-7-405 and 1-7-406 which authorizes the hiring of employees by solicitors.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> , as requested by the agency in its law recommendation number fifteen, that the General Assembly consider repealing subsection (A)(4) of S.C. Code Section 1-7-940 relating to providing blank indictments to solicitors.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> , as requested by the agency in its law recommendation number sixteen, that the General Assembly consider repealing S.C. Code Section 22-3-546, because a separate statute allowing solicitors to prosecute these charges (domestic violence) in General Sessions court may no longer be necessary.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Hixon's motion that the Subcommittee Study include a <u>recommendation</u> that the agency provide the Committee a list of data the agency recommends collecting annually (e.g., backlog by circuit) and/or every three years (e.g., caseload analysis), and the following for each type of data: (a) to whom it would be available, and (b) what may be gained from knowing it (e.g., notice that changes may be needed in certain circuits to address backlog, number of prosecutors and public defenders needed to maintain reasonable caseload per attorney, etc.)	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Hixon's motion that the Subcommittee Study include a <u>recommendation</u> that the agency develop a formal replacement cycle plan for technology and educational resources which it states are essential for agency staff (e.g., computers, digital or print publications, etc.). The plan should be updated regularly and include, but not be limited to, anticipated costs and how those costs will be paid.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Hixon's motion that the Subcommittee Study include a <u>recommendation</u> that the agency do the following: (1) obtain baseline customer satisfaction data on the current methods in which the agency provides information, including, but not limited to, frequency and ease with which staff access the information; (2) after the new website is created, continue tracking customer satisfaction to gauge the success of the agency's new methods of communicating. The agency should retain its data should members ever request it in the future. Also, the agency should use this data to update/revise the website as necessary to continually improve customer satisfaction and return on the agency's investment in the new technology; and (3) House Legislative Oversight Committee staff investigate if an agency's carryforward money may be used in asbestos abatement and removal or if the state covers these costs so an agency may focus the spending of its carryforward on the agency mission.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> that the General Assembly consider assisting the agency in finding a method by which the agency can obtain data on the number of individuals prosecuted annually by circuit and county.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> that the agency promulgate regulations that provide uniform metrics to measure success based on aggregated data. There may be several metrics utilized for different types of cases (e.g., adult versus juvenile, first time versus repeat offender, felony versus misdemeanor, etc.) but there should be some uniform metrics, including, but not limited to backlog of cases, utilized across all circuits, to allow for comparison from circuit to circuit and county to county.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Hixon's motion that the Subcommittee Study include a <u>recommendation</u> that the agency (1) create a way for each solicitor to electronically report to the agency the same personnel information included in the Commission on Indigent Defense's annual human resources and funding survey, (2) promulgate regulations to require this reporting from circuit solicitors on a regular basis; and (3) publish this information in a report on the website of each circuit solicitor, the agency, and the General Assembly.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> that the agency make reasonable efforts to communicate with potentially impacted parties about issues present in our state regarding the setting of court dockets; and, afterward, submit to the House Legislative Oversight Committee recommended statutory language to address the issues.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Johnson's motion that the Subcommittee Study include a <u>finding</u> that the expense of storing body camera videos and other law enforcement videos will be an issue the General Assembly will need to address in the future, regardless of whether electronic evidence is managed through a cloud based system or other system.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> that the General Assembly consider conforming the retention period for court recordings with the retention period for evidence as established in S.C. Code Section 17-28-320(C), the "Preservation of Evidence Act", that is sufficient in duration to cover the time period during which a defendant may challenge a conviction.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

<p>Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> that the agency work with impacted parties, including, but not limited to (a) law enforcement entities, (b) Department of Juvenile Justice, (c) Department of Corrections, (d) Department of Probation, Parole, and Pardon, and (e) Department of Mental Health, to determine a uniform definition, or definitions, of recidivism. The definition(s) should allow each entity involved to collect the type of data the agency needs to reliably report recidivism.</p> <p>There may be several definitions of recidivism to account for different types of cases as well as for adult versus juvenile offenses, but the definitions should be uniform statewide. The agency should focus first on domestic violence and driving under the influence cases.</p> <p>By the end of next year the agency should have the following to promulgate in regulations:</p> <p>(a) uniform definition for recidivism in domestic violence and DUI matters,</p> <p>(b) list of data that can be tracked by all parties involved with their current systems,</p> <p>(c) process for how the data will be tracked, aggregated, and electronically reported, and</p> <p>(d) timeline for determining a uniform definition of recidivism in other types of matters.</p>	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

<p>Rep. Johnson's motion that the Subcommittee Study include the following <u>recommendations</u>:</p> <p>(1) The General Assembly consider revising statutes that list information entities which administer traffic education, alcohol education, and diversion programs must collect and report by stating the Prosecution Commission will determine the data needed (e.g. recidivism, etc.), and the Commission will add the following to its annual report on statewide diversion programs:</p> <p>(a) explanation of the applicable laws and legislative intent, (b) list of the data being collected, and (c) explanation of why the data best illustrates whether the outcomes sought by the General Assembly are being achieved.</p> <p>This revision may allow flexibility to account for changes over time in what data and metrics may best illustrate the outcomes being achieved; and</p> <p>(2) The agency analyze how to measure whether outcomes intended from pre-trial intervention programs are being achieved and include the following in its updated PTI standards and guidelines: (a) outcome(s) sought from the programs, (b) how each program should measure its effectiveness and efficiency in achieving these outcomes, and (c) method and frequency by which each program must record and report its target and actual results on the measures.</p>	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

<p>Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> that the agency further research case management software to determine if there is software available that will allow a solicitors office to obtain evidence through uploading online as well as through transferring from a cd or flash drive.</p>	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

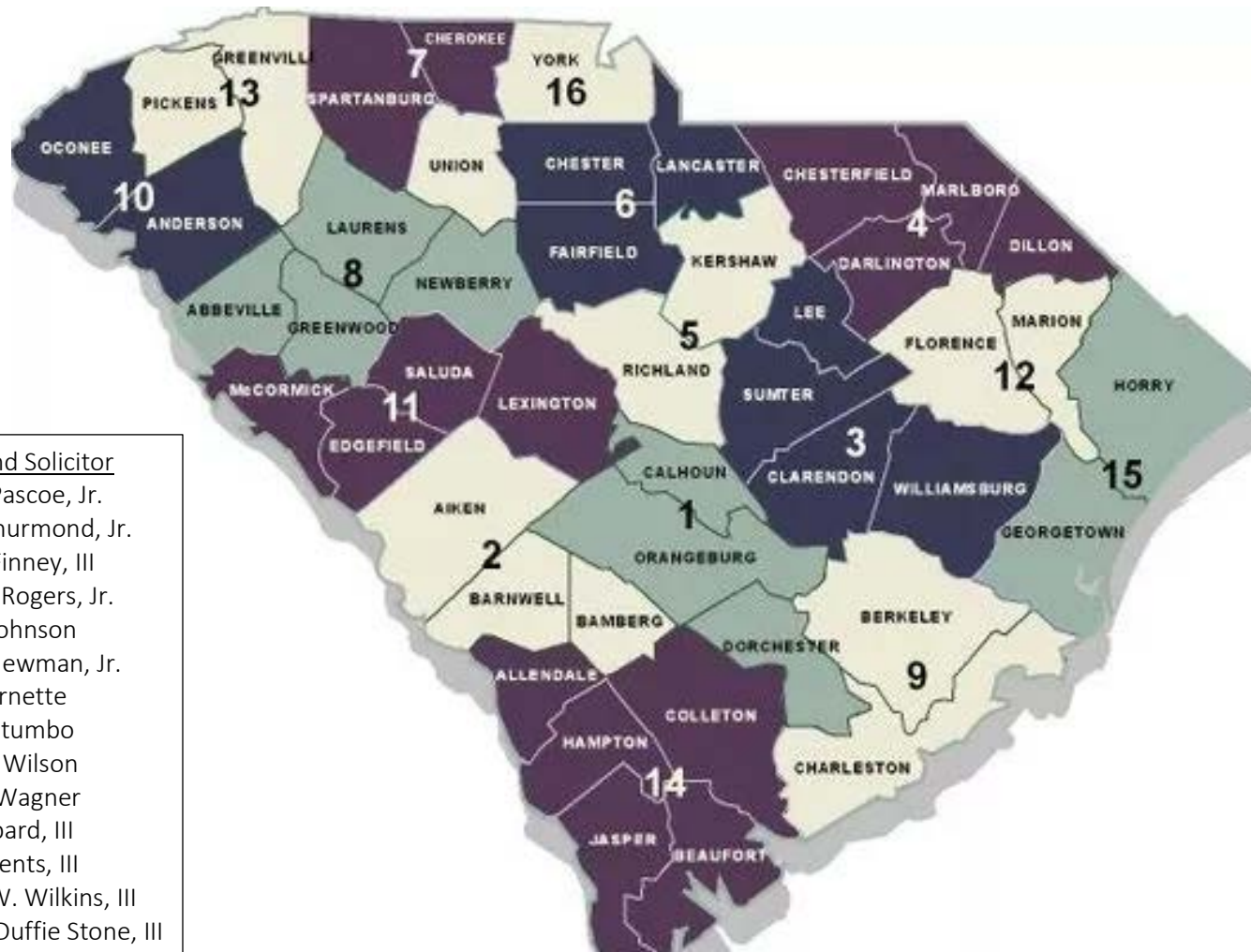
Rep. Johnson's motion that the Subcommittee Study include a <u>recommendation</u> that the agency accomplish the following: (1) determine the current cost to the agency of re-entering information individual circuit solicitors provide about traffic education, alcohol education, diversion programs, and pre-trial intervention programs; and (2) ensure there is a method, to the extent it can securely and efficiently be done, by which individual circuit solicitors can enter data on these programs so the data automatically goes into a format the agency can utilize for analysis and reporting.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

Rep. Hixon's motion that the Subcommittee Study include the following two <u>recommendations</u> : (1) The agency continue to obtain input from impacted parties regarding potential language for legislation that may encourage increased communication between circuit solicitors' offices and law enforcement personnel regarding cases; and (2) If a consensus is reached among the parties regarding potential language for legislation that may encourage increased communication between solicitors' offices and law enforcement, the General Assembly consider passing the recommended language.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

<p>Rep. Hixon's motion that the Subcommittee Study include a <u>recommendation</u> that the agency accomplish the following within the next year:</p> <p>(1) work with the Criminal Justice Academy (Academy), Law Enforcement Training Council, and other impacted parties to determine different statistical information that can be collected by solicitors' offices which may be beneficial to the Academy in determining topics which may need additional emphasis during training of all law enforcement personnel, and/or in suggesting specific areas of additional training for certain law enforcement entities or officers. The information may include, but not limited to, the percentage of cases received from each law enforcement entity which are prosecuted; and</p> <p>(2) promulgate regulations which accomplish the following:</p> <p>(a) explain why the data is needed, what it is to be used for, and how it can be beneficial for all involved,</p> <p>(b) clearly define what data is tracked, the method of collection, and the method of reporting; and</p> <p>(c) state the frequency in which the information, including examples of how it has helped all impacted parties in the performance of their jobs, will be available to law enforcement entities, solicitors, General Assembly, and public.</p>	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

VI. There being no further business, the meeting is adjourned.

S.C. JUDICIAL CIRCUITS



Circuit and Solicitor

- 1 - David M. Pascoe, Jr.
- 2 - J. Strom Thurmond, Jr.
- 3 - Ernest A. Finney, III
- 4 - William B. Rogers, Jr.
- 5 - Daniel E. Johnson
- 6 - Randy E. Newman, Jr.
- 7 - Barry J. Barnette
- 8 - David M. Stumbo
- 9 - Scarlett A. Wilson
- 10 - David R. Wagner
- 11 - S.R. Hubbard, III
- 12 - E.L. Clements, III
- 13 - William W. Wilkins, III
- 14 - Isaac McDuffie Stone, III
- 15 - Jimmy A. Richardson
- 16 - Kevin S. Brackett

Circuit and Public Defender

- 1 - Mark Leiendecker
- 2 - De Grant Gibbons
- 3 - Jack D. Howle, Jr.
- 4 - Matt Rivers
- 5 - Fielding Pringle
- 6 - Mike Lifsey
- 7 - Clay T. Allen
- 8 - Janna A. Nelson
- 9 - D. Ashley Pennington
- 10 - Jennifer L. Johnson
- 11 - Robert M. Madsen
- 12 - Scott Floyd
- 13 - Christopher D. Scalzo
- 14 - Stephanie Smart-Gittings
- 15 - Orrie E. West
- 16 - Harry A. Dest

Figure 1. Map of S.C. judicial circuits with counties and list of circuit solicitors and public defenders as of August 2018.¹

STUDY TIMELINE

The House Legislative Oversight Committee's (Committee) process for studying the Commission on Indigent Defense (agency, Commission, or SCCID) includes actions by the full Committee; Law Enforcement and Criminal Justice Subcommittee (Subcommittee); the agency; and the public. Key dates and actions are listed below.

Legislative Oversight Committee Actions

- December 19, 2017 - Prioritizes the agency for study
- January 22, 2018 - Provides the agency notice about the oversight process
- January 23 - March 1, 2018 - Solicits input about the agency in the form of an online public survey
- April 26, 2018 - **Meeting #2** to obtain public input about the agency

Law Enforcement and Criminal Justice Subcommittee Actions

- April 24, 2018 - Holds **Meeting #1** to discuss the agency's history, legal directives, mission, vision, general information about employees and finances, details about the agency's administration unit, and agency recommendations for internal and law changes
- May 1, 2018 - Holds **Meeting #3** to discuss questions from information presented by the agency during the previous meeting
- August 14, 2018 - Holds **Meeting #4** to discuss the process from the time an indigent defendant is arrested to case resolution, indigency screening, death penalty trial division, and division of appellate defense
- August 28, 2018 - Holds **Meeting #5** to discuss the performance measures that may be utilized in indigent defense, and the Office of the Circuit Public Defenders
- September 13, 2018 - (TODAY) Holds **Meeting #6** to discuss the agency's law recommendations and questions from prior meetings

Commission on Indigent Defense Actions

- March 9, 2015 - Submits its **Annual Restructuring and Seven-Year Plan Report**
- January 20, 2016 - Submits its **2016 Annual Restructuring Report**
- September 2016 - Submits its **2015-16 Accountability Report**
- September 2017 - Submits its **2016-17 Accountability Report**
- March 16, 2018 - Submits its **Program Evaluation Report**

Public's Actions

- January 23 - March 1, 2018 - Provides input about the agency via an **online public survey**
- Ongoing - Submits written comments on the Committee's webpage on the General Assembly's website (www.scstatehouse.gov)

Figure 2. Key dates in the study process, December 2017 to present.

AGENCY SNAPSHOT

Commission on Indigent Defense

Major Agency Organizational Units

Office of Circuit Public Defenders

Provides a statewide public defender system with standards and accountability for the delivery of legal representation to indigent defendants in state courts.

Division of Appellate Defense

Represents indigents in the majority of criminal appeals, including death penalty appeals before the SC Court of Appeals and the SC Supreme Court.

Administration

Provides leadership and direction for the agency to include administrative, financial, and support services.

Death Penalty Trial Division

Represents indigents in trials involving the death penalty (i.e., capital trials) statewide.

FY 17-18 Resources

Employees

Available FTE: 70.50
Filled FTE: 68.50
Temp/Grant: 1.00

Funding

\$45.06 million
appropriated and
authorized

SUCCESSES

- Implementing the statewide public defender system which enabled oversight by the Commission.

- Coordinating the Rule 608 contract system which allows the agency to take applications and select those attorneys qualified to handle specific types of cases to include criminal, post-conviction relief, sexual violent predator, and certain family court matters.

- Conducting focused seminars and workshops for public defenders with fewer than three years experience and continued annual training for other public defenders and contract attorneys.

CHALLENGES

- Addressing whether defendants are being adequately screened to assess their financial status for appointed counsel.

- Representing individuals in an efficiently functioning criminal justice system with a disparity in funding at the county level between prosecution and defense.

- Finding enough contract attorneys qualified to handle specific types of cases in the rural areas of the state where a county may have a very limited number of attorneys.

Figure 3. Snapshot of the agency's major organizational units, fiscal year 2017-18 resources (employees and funding), successes, and challenges.²

ORGANIZATIONAL CHART

Figure 4 includes an organizational chart, current as of March, 2018.

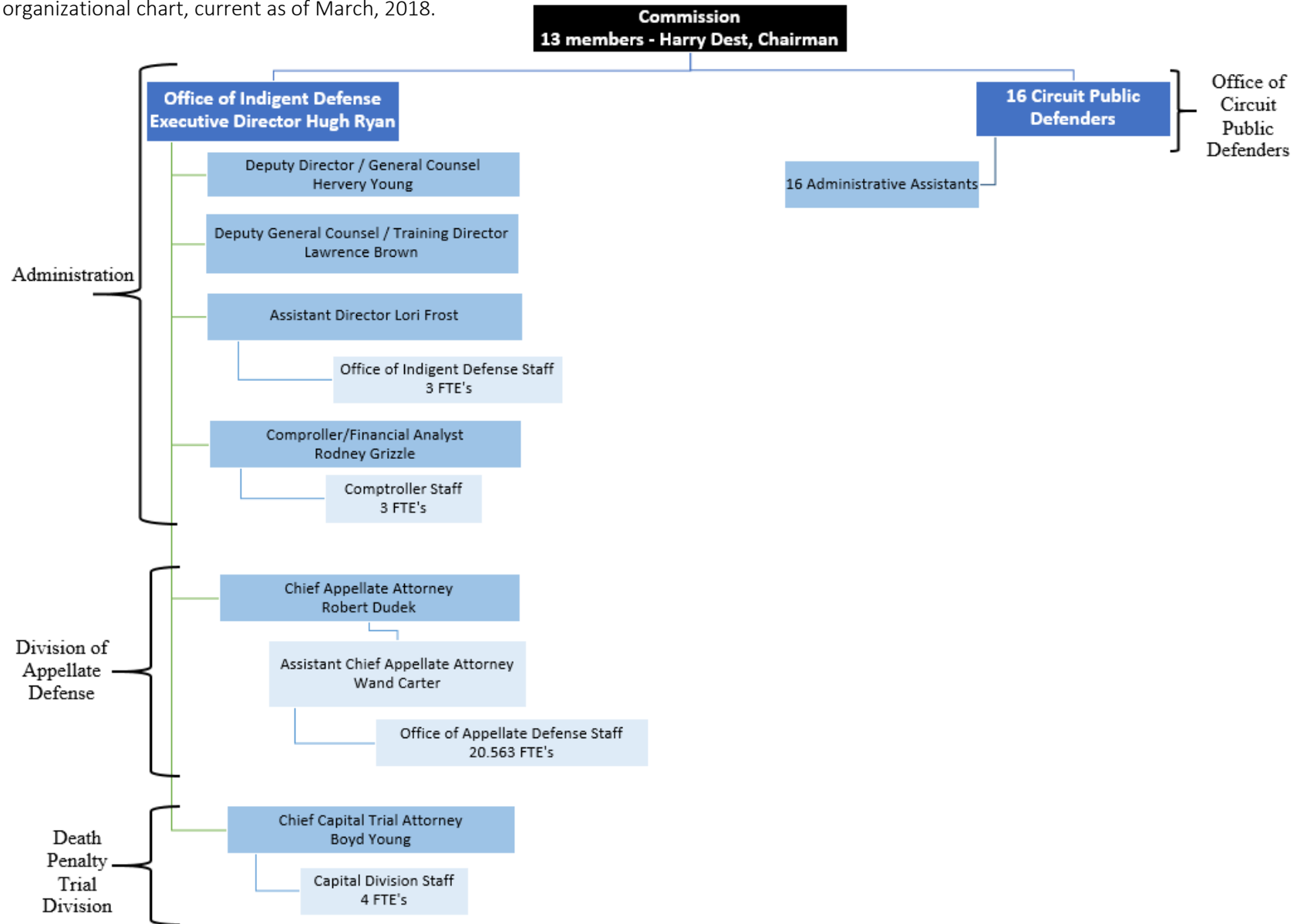


Figure 4. SCCID Organizational chart as of March 2018.³

LEGAL DIRECTIVES

The importance of guaranteeing a citizen the right to trial and providing equal protection under the law are outlined in the following sections of the United States Constitution:

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The South Carolina Commission on Indigent Defense, through S.C. Code Ann. 17-3-310, exists to develop rules, policies, procedures, regulations, and standards it considers necessary to comply with state law, regulations, and the rules of the Supreme Court, as it relates to the nature and scope of services, clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation. Table 1 provides a comparison of the duties of the Commission, which is the governing body of the agency, and the Office of Indigent Defense, which operates under the jurisdiction of the Commission.

Table 1. Legal directives for the Commission compared to directives for the Office of Indigent Defense

Legal directives for the...	
Commission on Indigent Defense Applicable statutes: S.C. Code Ann. 17-3-310 ⁴ and 17-3-340 ⁵	Office of Indigent Defense (OID) Applicable statutes: S.C. Code Ann. 17-3-330 ⁶ and 17-3-360 ⁷
<u>Operations</u>	
<p>Commission shall...</p> <p><u>In General</u></p> <ul style="list-style-type: none"> Establish divisions within the office to administer necessary services and programs.⁸ Act in the best interest of indigent defendants who are receiving legal representation.⁹ <p><u>Meetings/Officers</u></p> <ul style="list-style-type: none"> Meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties.¹⁰ Elect such officers, other than the chairperson, from the members of the commission as it deems necessary.¹¹ Adopt rules for the transaction of its business as it desires.¹² <p><u>Clients and Services</u></p> <ul style="list-style-type: none"> Develop rules, policies, procedures, regulations, and standards necessary to comply with state law or regulations and the rules of the Supreme Court including: (1) nature and scope of services to be provided; (2) clientele to be served; (3) establishment of criteria to be used in the determination of indigency; and (4) qualifications for services for indigent legal representation.¹³ Approve and implement programs, services, rules, policies, procedures, regulations, and standards for determining indigence and for assessing and collecting the costs of legal representation and related services.¹⁴ 	<p>OID shall...</p> <p><u>Office Operations</u></p> <ul style="list-style-type: none"> Administer and coordinate the operations of the office and all divisions within the office.¹⁵ Maintain proper records of all financial transactions related to the operation of the office.¹⁶ <p><u>Commission Operations</u></p> <ul style="list-style-type: none"> Coordinate in the development and implementation of rules, policies, procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards.¹⁷ Executive Director will attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director.¹⁸ Maintain proper records of all financial transactions related to the operation of the commission.¹⁹ Ensure the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources.²⁰ <p><u>Statewide Indigent Defense Services</u></p> <ul style="list-style-type: none"> Prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require.²¹ Distribute all funds appropriated by the General Assembly for the defense of indigents.²² Apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests.²³ <p>Implement and perform other duties the commission may direct or assign.²⁴</p>

Legal directives for the...

Commission on Indigent Defense

Applicable statutes: S.C. Code Ann. 17-3-310⁴ and 17-3-340⁵

Office of Indigent Defense (OID)

Applicable statutes: S.C. Code Ann. 17-3-330⁶ and 17-3-360⁷

Circuit Public Defender Division

(operates under jurisdiction of the Commission)

Commission shall...

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for maintaining and operating circuit public defender offices.²⁵
- Establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels.²⁶
- Establish the rules and procedures under which the selection panels shall operate.²⁷
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for the qualifications, employment, and compensation of public defenders and other circuit public defender office personnel.²⁸
- Assist the public defenders throughout the state in their efforts to provide adequate legal defense to the indigent.²⁹
- Negotiate and enter into contracts(not required to, but may), as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable.³⁰

OID shall...

- Supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission.³¹
- Provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter.³²

Contract/Appointed Counsel and Conflicts of Interest

Commission shall...

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for compensation of attorneys appointed to represent indigent persons pursuant to this chapter.³³
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for accepting contractual indigent defense representation.³⁴
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person.³⁵

OID shall...

- Provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter.³⁶

Legal directives for the...

Commission on Indigent Defense

Applicable statutes: S.C. Code Ann. 17-3-310⁴ and 17-3-340⁵

Office of Indigent Defense (OID)

Applicable statutes: S.C. Code Ann. 17-3-330⁶ and 17-3-360⁷

Specialty Work

Commission shall...

Experts and Investigators

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons.³⁷

Juveniles

- Approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.³⁸

OID shall...

Appeals

- Provide defense to indigents who desire to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility.³⁹

Death Penalty

- Provide defense to indigents in death penalty cases.⁴⁰

Statistics/Performance

Commission shall...

- Cooperate and consult with state agencies, professional associations, and other groups concerning⁴¹
 - Causes of criminal conduct,
 - Rehabilitation and correction of persons charged with and convicted of crimes,
 - Administration of criminal justice, and
 - Improvement and expansion of defender services.
- Collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the State.⁴²
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for delivery of indigent services. This includes, but is not limited to, standards for:
 - public defender and appointed counsel caseloads, including a uniform definition of a “case” for purposes of determining caseload statistics;
 - performance of public defenders and appointed counsel representing indigent persons;
 - procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate courts, whether by contract or court appointment; and
 - removing a circuit public defender for cause.⁴³

OID shall...

- Coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services.⁴⁴
- Serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this state.⁴⁵
 - Note: This directive only requires the agency to serve as a resource for others who may be compiling information; it does not require the agency to compile information.⁴⁶ Currently, the only law requiring the agency to compile information is a proviso which requires the agency to compile information on revenue streams and expenditures by circuit.⁴⁷
- Report annually to the General Assembly on the indigent defense system.⁴⁸

MISSION AND VISION

The agency provides Act 164 of 1993 and S.C. Code Ann. 17-3-310, et. seq., as the basis for its mission and vision.

SCCID's mission is as follows:

The Commission on Indigent Defense, through the Office of Indigent Defense and its divisions, and in cooperation and consultation with other state agencies, professional associations and other groups interested in the administration of criminal justice and the improvement and expansion of defender services, **establishes and monitors programs and services for legal representation to indigent defendants charged with criminal offenses in the courts of the state. The agency also manages the Rule 608 Contract program, contracting with attorneys across the state to provide representation in criminal and specific family court cases.** (emphasis added)

SCCID's vision is to

Ensure that individuals, determined to be indigent, are provided the highest quality legal defense representation.

AGENCY STRATEGIC PLAN AND PERFORMANCE

In the Program Evaluation Report, the **Committee asks an agency how it allocates its human and financial resources to accomplish its goals** (i.e., broad expression of a long-term priority) **and objectives** (i.e., specific, measurable and achievable description of an effort the agency is implementing to achieve a goal) in the agency's strategic plan.⁴⁹ The Committee also asks the agency to list any funds the agency spent or transferred not toward the agency's comprehensive strategic plan.

Table 2.1-2.5 includes an overview of how the agency allocated its resources to its goals and strategies. Table 3 includes detailed information regarding the related performance measures.

Strategic Plan

Table 2.1. Agency Strategy 1.1: Enhance the circuit public defender system.

GOAL 1 Ensure the effective legal representation of S.C. citizens eligible for indigent defense services

Strategy 1.1 Enhance the circuit public defender system

Objective 1.1.1	Provide effective administration for the circuit public defender offices and for the appointment of counsel for all qualified indigent defendants in S.C. trial courts and family court
Objective 1.1.2	Increase the number of public defenders in each circuit to reduce the number of cases handled by each public defender to ensure efficient representation of indigent defendants in all S.C. trial courts
Objective 1.1.3	Increase the number of investigators in each circuit
Objective 1.1.4	Monitor the Rule 608 contract system to provide effective representation for parents and other parties in family court matters and to control fees and expenses
Objective 1.1.5	Begin analysis of the interface of the circuit public defender offices into the Judicial Department's Case Management System (CMS)

Responsible Employee(s): Mr. Hugh Ryan (responsible for less than three years)
Employee have input in budget? Yes, Mr. Ryan has input into the budget for Strategy 1.1

External Partner(s): State and local government

	# of FTE equivalents utilized	Amount Spent (including employee salaries/wages and benefits)	% of Total Available to Spend	Associated Performance Measures
2016-17	37.4	\$34,524,212	78.01%	<ul style="list-style-type: none"> Increase the number of full-time public defenders in all 16 judicial circuits Decrease the number of cases handled by each individual public defender
2017-18	37.4	\$39,551,247	87.77%	

Table 2.2. Agency Strategy 1.2: Maintain the appellate defense system.

GOAL 1 Ensure the effective legal representation of S.C. citizens eligible for indigent defense services

Strategy 1.2 Maintain the appellate defense system

- Objective 1.2.1** Provide effective administration of the appellate defense system for all indigent defendants in S.C. trial courts
- Objective 1.2.2** Ensure judicious submission of direct appeal or post-conviction relief briefs within the time limits established by the S.C. Supreme Court

Responsible Employee(s): Mr. Bob Dudek (responsible for more than three years)
Employee have input in budget? Yes, Mr. Dudek has input into the budget for Strategy 1.2

External Partner(s): Federal government, state government, and individuals

	# of FTE equivalents utilized	Amount Spent (including employee salaries/wages and benefits)	% of Total Available to Spend	Associated Performance Measures
2016-17	24.25	\$ 2,081,018	4.70%	<ul style="list-style-type: none"> SCCID's defender data system maintains a calendar application to ensure appeal submissions and documentation are done in a timely manner. Monitoring of appeal filings ensures indigent clients are receiving professional and effective legal representation.
2017-18	25.25	\$ 2,497,936	5.54%	

Table 2.3. Agency Strategy 1.3: Ensure quality representation in capital death cases.

GOAL 1 Ensure the effective legal representation of S.C. citizens eligible for indigent defense services

Strategy 1.3 Ensure quality representation in capital death cases

- Objective 1.3.1** Provide effective administration of the capital defense system for all indigent defendants in S.C. trial courts
Objective 1.3.2 Require all Capital Trial Division attorneys be certified as S.C. Supreme Court Death Penalty Qualified

Responsible Employee(s): Mr. Boyd Young (responsible for less than three years)
Employee have input in budget? Yes, Mr. Young has input into the budget for Strategy 1.3

External Partner(s): Federal government, state government, and individuals

	# of FTE equivalents utilized	Amount Spent (including employee salaries/wages and benefits)	% of Total Available to Spend	Associated Performance Measures
2016-17*	7.25	\$ 848,615	1.92%	<ul style="list-style-type: none"> Continued training of the death penalty trial attorneys to ensure indigent clients receive professional and effective legal representation.
2017-18*	7.25	\$ 931,235	2.07%	

Table Note: An asterisks () denotes the data relates to Strategy 1.3 which includes the Death Penalty Trial Division and a portion of the agency's administration organizational unit.*

Table 2.4. Agency Strategy 2.1: Provide mandatory training program for all new public defenders and contract attorneys.

GOAL 2 Enhance training and professional development of S.C. public defenders and staff

Strategy 2.1 Provide mandatory training program for all new public defenders and contract attorneys

- Objective 2.1.1 Increase accessibility to PD 101, PD 102 and PD 103 training classes
- Objective 2.1.2 Conduct topic specific training to all public defenders and contract attorneys
- Objective 2.1.3 Implement online training for all public defenders in the indigent defense system

Responsible Employee(s): Mr. Lawrence Brown (responsible for less than three years)
Employee have input in budget? Yes, Mr. Brown has input into the budget for Strategy 1.1

External Partner(s): Local governments and individuals

	# of FTE equivalents utilized	Amount Spent (including employee salaries/wages and benefits)	% of Total Available to Spend	Associated Performance Measures
2016-17	0.55	\$ 104,414	0.24%	<ul style="list-style-type: none"> Increase attendance in the public defender training sessions: PD 101, PD 102 and PD 103 Increase the number of continuing education hours provided to public defenders (CLE)
2017-18	0.55	\$ 378,635	0.84%	

Table 2.5. Agency Strategy 2.2: Enhance mentoring programs in circuit public defender offices.

GOAL 2 Enhance training and professional development of S.C. public defenders and staff

Strategy 2.2 Enhance mentoring programs in circuit public defender offices

- Objective 2.2.1 Expand mentoring programs to all 16 public defender circuits
 Objective 2.2.2 Provide mentoring opportunities to newly hired public defenders in family and summary courts

Responsible Employee(s): Mr. Lawrence Brown (responsible for less than three years)
Employee have input in budget? Yes, Mr. Brown has input into the budget for Strategy 1.1

External Partner(s): Local governments

	# of FTE equivalents utilized	Amount Spent (including employee salaries / wages and benefits)	% of Total Available to Spend	Associated Performance Measures
2016-17	0.05	\$ 2,685	0.01%	<ul style="list-style-type: none"> Increase the number of judicial circuits that have mentoring programs for new public defenders in family and summary courts
2017-18	0.05	\$ 2,685	0.01%	

Performance

The agency provided its performance measures in its Program Evaluation Report (PER). The agency was asked to categorize each measure based on the definitions below:⁵⁰

Types of Performance Measures:

Outcome Measure - A quantifiable indicator of the public and customer benefits from an agency's actions. Outcome measures are used to assess an agency's effectiveness in serving its key customers and in achieving its mission, goals and objectives. They are also used to direct resources to strategies with the greatest effect on the most valued outcomes. Outcome measures should be the first priority. Example - % of licensees with no violations.

Efficiency Measure - A quantifiable indicator of productivity expressed in unit costs, units of time, or other ratio-based units. Efficiency measures are used to assess the cost-efficiency, productivity, and timeliness of agency operations. Efficiency measures measure the efficient use of available resources and should be the second priority. Example - cost per inspection

Output Measure - A quantifiable indicator of the number of goods or services an agency produces. Output measures are used to assess workload and the agency's efforts to address demands. Output measures measure workload and efforts and should be the third priority. Example - # of business license applications processed.

Input/Activity Measure - Resources that contribute to the production and delivery of a service. Inputs are "what we use to do the work." They measure the factors or requests received that explain performance (i.e. explanatory). These measures should be the last priority. Example - # of license applications received.

Table 3 includes details about the performance measures tracked by the agency.

Appendix A provides a flow chart which summarizes steps in the process related to contract attorneys. Appendix B includes a sample agreement for a Rule 608 contract attorney providing criminal representation. Appendix C includes a sample agreement for a Rule 608 contract attorney providing representation in family court matters. Appendix D includes performance standards for public defenders and assigned counsel (non-capital) that were formally adopted by the S.C. Commission on Indigent Defense on June 7, 2013, effective July 1, 2013. Appendix E includes performance standards for public defenders and assigned counsel in juvenile cases that were formally adopted by the S.C. Commission on Indigent Defense on June 7, 2013, effective July 1, 2013.

Table 3. Performance measures tracked by the agency.

Performance Measure	Type of Measure		2013-14	2014-15	2015-16	2016-17	2017-18
Increase the number of Full-Time Public Defenders (PD) in all 16 Judicial Circuits <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	291.50	291.50	291.50
		<u>Actual:</u>	DNE	DNE	236.50	272.50	<u>Trend Line</u> Not applicable, because only two data points are available.
Decrease the number of cases (Warrants) handled by each individual Public Defender <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	376	376	376
		<u>Actual:</u>	DNE	DNE	464	426	<u>Trend Line</u> Not applicable, because only two data points are available.
Increase attendance in the Public Defender Training Sessions; PD 101, PD 102 and PD 103 <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	165	165	165
		<u>Actual:</u>	DNE	DNE	79	182	<u>Trend Line</u> Not applicable, because only two data points are available.
Increase the number of Continuing Education Hours provided to PD's (Continuing Legal Education) <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	60	60	60
		<u>Actual:</u>	DNE	DNE	48.50	59	<u>Trend Line</u> Not applicable, because only two data points are available.
Increase number of Judicial Circuits the have mentoring programs for new PD's in the Family and Summary Courts <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	16	16	16
		<u>Actual:</u>	DNE	DNE	2	7	<u>Trend Line</u> Not applicable, because only two data points are available.

*Table Note: "DNE" means did not exist.

AGENCY RECOMMENDATIONS

In the Program Evaluation Report, the Committee asks the agency to provide a list of recommendations related to internal changes and changes in laws, which may improve the agency's efficiency and effectiveness, or update antiquated laws. All of the agency's recommendations, which are listed below, relate to the agency as a whole, as opposed to any particular organizational unit within the agency.

- Internal Agency Recommendation
 - #1: Electronic direct deposit to pay Rule 608 contract attorneys
- Law Recommendations
 - #1: S.C. Code Ann. 17-3-30
 - #2: S.C. Code Ann. 17-3-40
 - #3: S.C. Code Ann. 17-3-50
 - #4: S.C. Code Ann. 17-3-80
 - #5: S.C. Code Ann. 17-3-85
 - #6: S.C. Code Ann. 17-3-90
 - #7: S.C. Code Ann. 17-3-100
 - #8: S.C. Code Ann. 17-3-510

Internal Changes

Internal Change #1: Electronic direct deposit to contract attorneys

The South Carolina Commission on Indigent Defense is in the process of moving from payments of the 608 Attorney payment vouchers by check, to using electronic direct deposit. This internal process change will allow the agency to be more efficient in the processing of payment vouchers requests.

- a. Stage of analysis: A plan of implementation has been set
- b. Presented and Approved by Board/Commission: Commission has been notified of internal process change, but does not require Commission approval.
- c. Performance measures impacted and predicted impact: This internal change will allow SCCID to process voucher payments requests, with recipient to receive their payments in a shorter time.
- d. Impact on amount spent to accomplish the objective(s): SCCID anticipates a reduction in other operating costs, due to reduction in need for printed materials both at the agency and by the Comptroller General's office in the printing of checks and mailing cost since payments will be electronically deposited into identified recipient's accounts.
- e. Anticipated implementation date: March 1, 2018

Law Changes

Law Change Recommendation #1 - S.C. Code Section 17-3-30

The agency recommends eliminating S.C. Code Section 17-3-30, which addresses applications for indigent representation, as the provisions within it may already be included in S.C. Code Section 17-3-45.⁵¹ A comparison of the potentially duplicative statutes is below.

While subsection (c) of S.C. Code Section 17-3-30 is not duplicated in Section 17-3-45, the agency requests deletion of the subsection stating it is vague, lacks clarity, and does not take into account that screening is conducted by several different entities.⁵²

Statute agency recommends eliminating	Statute in which provisions are also included (see text in bold)
<p>SECTION 17-3-30. Affidavit of inability to employ counsel; payment of indigent's assets to state; application fee; waiver or reduction of fee; disposition of fee revenues; fund for screening applicants.</p> <p>(A) A person to whom counsel has been provided shall execute an affidavit that he is financially unable to employ counsel and that affidavit must set forth all his assets. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets to the general fund of the State.</p> <p>(B) A forty dollar application fee for public defender services must be collected from every person who executes an affidavit that he is financially unable to employ counsel. The person may apply to the clerk of court or other appropriate official for a waiver or reduction in the application fee. If the clerk or other appropriate official determines that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge upon sentencing and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the state fund on a monthly basis. The monies must be deposited in an interest-bearing account separate from the general fund and used only to provide for indigent defense services. The monies shall be administered by the Office of Indigent Defense. The clerk of court or other appropriate official shall maintain a record of all persons applying for representation and the disposition of the</p>	<p>SECTION 17-3-45. Affidavit of assets of persons seeking appointed counsel; application fee; claim against assets and estate of person provided counsel.</p> <p>(A) A person to whom counsel has been provided in any court in this State shall execute an affidavit that the person is financially unable to employ counsel and that affidavit shall set forth all of the person's assets. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets or a portion thereof to the Office of Indigent Defense.</p> <p>(B) A forty dollar application fee for appointed counsel services must be collected from every person who executes an affidavit that they are financially unable to employ counsel. The person may apply to the court, the clerk of court, or other appropriate official for a waiver or reduction in the application fee. If it is determined that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge and the trial judge shall order the remainder of the fee paid during probation if the person is granted probation or by a time payment method if probation is not granted or appropriate. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the Public Defender Application Fund on a monthly basis. The monies must be deposited in an interest-bearing account separate from the general fund and used only to provide for indigent defense services. The monies shall be administered by the Office of Indigent Defense. The clerk of court or other appropriate official shall maintain a record of all persons applying for representation and the disposition of the application and shall provide this information to the Office of Indigent Defense on a</p>

application and shall provide this information to the Office of Indigent Defense on a monthly basis as well as reporting the amount of funds collected or waived.

(C) Sufficient funds shall be set aside from allocations provided for the defense of indigent to provide for adequate screening of applications for indigent assistance to ensure the applicant is qualified.

HISTORY: 1962 Code § 17-282; 1969 (56) 374; 1977 Act No. 219 Pt II § 19; 1988 Act No. 356, § 1; 1993 Act No. 164, Part II, § 45E; 1994 Act No. 497, Part I, E23-§ 14; 1995 Act No. 145, Part IB, E23-§ 14; 1996 Act No. 458, Part II, § 26B; 1999 Act No. 100, Part II, § 17; 2007 Act No. 108, § 4, eff June 21, 2007.

monthly basis as well as reporting the amount of funds collected or waived.

(C) In matters in which a juvenile is brought before a court, the parents or legal guardian of such juvenile shall execute the above affidavit based upon their financial status and shall be responsible for paying any fee. In juvenile matters, the parents or legal guardians of the juvenile, must be advised in writing of this requirement at the earliest stage of the proceedings against the juvenile.

(D) Nothing contained in this section restricts or hinders a court from appointing counsel in any emergency proceedings or where there is not sufficient time for an individual to complete the application process.

(E) The appointment of counsel creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the costs of representation as determined by a voucher submitted by the appointed counsel and approved by the court, less that amount that the person pays either to the appointed counsel or defender corporation of the county or counties where he is represented or to the Office of Indigent Defense. The claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.

(F) The court may, in its discretion, order any claim or judgment waived, modified, or withdrawn.

HISTORY: 2008 Act No. 353, Section 2, Pt 23I, eff July 1, 2009.

Law Change Recommendation #2 - S.C. Code Section 17-3-40

The agency recommends eliminating S.C. Code Section 17-3-40, which addresses creation of claims against assets of individuals receiving indigent representation, as the provisions within it are included in S.C. Code Section 17-3-45.⁵³

Subsections A and B of 17-3-40 are combined and repeated in Section 17-3-45(E).⁵⁴ According to the agency, some of the wording was changed to make the section more understandable and clear.⁵⁵ Subsection C of 17-3-40 is repeated verbatim in Section 17-3-45(F).⁵⁶ According to the agency, subsection D was deleted to relieve the judicial department from the duty of administering this section.⁵⁷ Section 17-3-45 is the most recent section which appears to the agency to have been written at the time the public defender system changed to the statewide circuit public defender system.⁵⁸

A comparison of the potentially duplicative statutes is below.

Statute agency recommends eliminating	Statute in which provisions are also included (see text in bold)
<p>SECTION 17-3-40. Creation of claim against assets and estate of person for whom counsel is provided.</p> <p>(a) The appointment of counsel, as hereinbefore provided, creates a claim against the assets and estate of the person who is provided counsel in an amount equal to the costs of representation as determined pursuant to Sections 17-3-50 and 17-3-80, less that amount that the person pays to the defender corporation of the county or counties wherein he is being represented or the judicial department as provided for in Section 17-3-30.</p> <p>(b) Such claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.</p> <p>(c) The court may, in its discretion, order any claim or judgment waived, modified or withdrawn.</p> <p>(d) The Judicial Department shall be responsible for administering this section, and all moneys collected hereunder shall be paid over to the Judicial Department.</p>	<p>SECTION 17-3-45. Affidavit of assets of persons seeking appointed counsel; application fee; claim against assets and estate of person provided counsel.</p> <p>(E) The appointment of counsel creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the costs of representation as determined by a voucher submitted by the appointed counsel and approved by the court, less that amount that the person pays either to the appointed counsel or defender corporation of the county or counties where he is represented or to the Office of Indigent Defense.</p> <p>The claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this chapter.</p> <p>(F) The court may, in its discretion, order any claim or judgment waived, modified, or withdrawn.</p> <p>HISTORY: 2008 Act No. 353, Section 2, Pt 23I, eff July 1, 2009.</p>

Law Change Recommendation #3 - S.C. Code Section 17-3-50

The agency recommends modifying S.C. Code Section 17-3-50, which addresses fees for appointed counsel and public defenders, to conform the language of the statute to budget provisos 61.1 and 61.4 and clarify language to reflect agency procedures and policies.

The requested revisions to the statute are below.

Statute agency recommends revising
<p>SECTION 17-3-50. Determination of fees for appointed counsel and public defenders; maximum amounts; authorization to exceed maximum; payment for certain services.</p> <p>(A) When private counsel is appointed pursuant to this chapter, he must be paid a reasonable fee to be determined on the basis of forty dollars an hour for time spent out of court and sixty dollars an hour for time spent in court. The same hourly rates apply in post-conviction proceedings. Compensation may not exceed three thousand five hundred dollars in a case in which one or more felonies is charged and one thousand dollars in a case in which only misdemeanors are charged. Compensation must be paid from funds available to the Office of Indigent Defense for the defense of indigents represented by court-appointed, private counsel. The same basis must be employed to determine the value of services provided by the office of the public defender for purposes of Section 17-3-40 <u>Section 17-3-45</u>.</p> <p>(B) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate.</p> <p>(C) Payment in excess of the hourly rates and limits in subsection (A) or (B) is authorized only if the court certifies, in a written order with specific findings of fact, <u>prior to fees or expenses being incurred</u>, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonable and necessarily incurred. <u>to be provided are reasonable and necessary. If prior approval by written order of the court is not obtained, no additional fees or expenses shall be paid.</u></p> <p>(D) Nothing in this section shall be construed to alter the provisions of Section 17-3-10 concerning those defendants who are entitled to legal representation.</p> <p>HISTORY: 1962 Code § 17-284; 1969 (56) 374; 1993 Act No. 164, Part II, § 45F; 2007 Act No. 108, § 5, eff June 21, 2007.</p>

Law Change Recommendation #4 and #7 - S.C. Code Section 17-3-80 and 17-3-100

The agency recommends eliminating S.C. Code Section 17-3-80, which relates to funds and expenses for appointed counsel and public defenders.⁵⁹ The agency affirms the defense fund referenced in the statute was established for fiscal year 1969-70 and is no longer funded.⁶⁰ Additionally, the agency states expenses of appointed counsel and public defenders are addressed in other code sections and budget provisos, including Proviso 61.1 in the 2018-19 General Appropriations Act, and S.C. Code Sections 17-3-20 and 17-3-50.⁶¹ Further, the agency recommends removing the reference to S.C. Code Section 17-3-80 which appears in S.C. Code Section 17-3-100.⁶²

The applicable statutes are below.

Statute agency recommends eliminating (no longer funded highlighted)
<p>SECTION 17-3-80. Appropriation for expenses of appointed private counsel and public defenders; restrictions and limitations.</p> <p>In addition to the appropriation as provided by law, there is appropriated for the fiscal year commencing July 1, 1969, the sum of fifty thousand dollars for the establishment of the defense fund which must be administered by the Office of Indigent Defense. This fund must be used to reimburse private-appointed counsel, public defenders, and assistant public defenders for necessary expenses, not to exceed two thousand dollars for each case, actually incurred in the representation of persons pursuant to this chapter, so long as the expenses are approved by the trial judge. No reimbursement may be made for travel expenses except extraordinary travel expenses approved by the trial judge. The total state funds provided by this section may not exceed fifty thousand dollars.</p> <p>HISTORY: 1962 Code § 17-287; 1969 (56) 374; 1977 Act No. 219 Pt II § 19; 1987 Act No. 142 § 1; 1993 Act No. 164, Part II, § 45G.</p>
Relevant other statutes and provisos
<p>Proviso 61.1. (INDEF: Defense of Indigents Formula) The amount appropriated in this act for "Defense of Indigents" shall be apportioned among counties in accord with Section 17-3-330 of the 1976 Code, but on a per capita basis and based upon the most current official decennial census of the United States; provided that no county shall receive funding in an amount less than the amount apportioned to it as of July 1, 2005. The level of contribution of each county as of July 1, 2001, must be maintained. No county shall be permitted to contribute less money than the amount the county contributed in the prior fiscal year. Within the amount of money established for indigent defense services, the State shall set aside \$3,000,000 (Death Penalty Trial Fund) annually for use of the defense in capital cases pursuant to Section 16-3-26 of the 1976 Code, for juveniles facing the possibility of a sentence of life without parole, and for the expenses of the operation of the Commission on Indigent Defense to include salaries and operations expenses of the Death Penalty Trial Division. The State also shall set aside \$2,500,000 annually to pay fees and expenses of private counsel appointed in noncapital cases pursuant to Section 17-3-50 (Conflict Fund). Of the funds generated from the fees imposed under Sections 14-1-206(C)(4), 14-1-207(C)(6) and 14-1-208(C)(6) and the application fee provided in Section 17-3-30(B), on a monthly basis, fifty percent must be deposited into the Death Penalty Trial Fund, fifteen percent must be deposited into the Conflict Fund, and the remaining funds each month must be apportioned among the counties' public defender offices pursuant to Section 17-3-330. At the end of each fiscal year any leftover funds shall carryover to the next fiscal year. All applications for the payment of fees and expenses in capital cases shall be applied for from the Death Penalty Trial Fund which shall be administered by the Commission on Indigent Defense. All applications for the payment of fees and expenses of private counsel or expenses of public defenders pursuant to Section 17-3-50 shall be applied for from the Conflict Fund administered by the Commission on Indigent Defense. Reimbursement in excess of the hourly rate and limit set forth in Section 17-3-50 is authorized only if the court certifies, in a written order with specific findings of fact, prior to the fees being incurred, that reimbursement in excess of the rates or limit is necessary to provide reimbursement adequate to ensure effective assistance of counsel and reimbursement in excess of the limit is appropriate because the services to be provided are reasonable and necessary. If prior approval by written order of the court is not obtained, no</p>

additional fees shall be paid under any circumstances. Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonable and necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall authorize the payment, from funds available to the Commission on Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate. Payment in excess of the five-hundred-dollar limit is authorized only if the court certifies, in a written order with specific findings of fact, prior to the expense being incurred, that payment in excess of the limit is appropriate because the services to be provided are reasonable and necessary to provide adequate defense. Payments shall be made from funds appropriated for this purpose from the Commission of Indigent Defense. If prior approval by written order of the court is not obtained, no additional expenses shall be paid under any circumstances. Indigent defense vouchers authorized in this provision must be reviewed and paid pursuant to procedures and policies established by the Commission on Indigent Defense. The commission shall provide a copy of the established procedures and policies to the Senate Finance Committee and the House Ways and Means Committee.

SECTION 17-3-20. Appointment of counsel for indigents charged with murder; compensation.

In the event any person who shall be charged with murder shall, after investigation by the court, be determined to be unable financially to retain adequate legal counsel, the court shall appoint such qualified and experienced counsel to defend such defendant in the trial of the action.

Such appointed counsel shall be paid such fee and costs as the court shall deem appropriate.

SECTION 17-3-50. Determination of fees for appointed counsel and public defenders; maximum amounts; authorization to exceed maximum; payment for certain services.

(B) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate.

SECTION 17-3-100. Discretionary authority of judge to appoint counsel is not limited; remuneration and reimbursement.

Nothing herein contained is designed to limit the discretionary authority of a judge to appoint counsel in any case and any such counsel shall be entitled to remuneration and reimbursement as provided in §§ 17-3-50 and 17-3-80 hereof, so long as funds appropriated herein are available therefor.

Law Change Recommendation #5 - S.C. Code Section 17-3-85

The agency recommends eliminating S.C. Code Section 17-3-85, which relates to appropriation of funds prior to creation of the statewide circuit public defender system.⁶³ The creation of the statewide circuit public defender system in 2007 replaced the previous system in which some counties had public-defender corporations and others did not.⁶⁴ According to the agency all counties are now covered by the statewide circuit public defender system, so funds are no longer appropriated in this manner.⁶⁵

Proposed language to implement this recommendation, and current law covers appropriation of funds, are below.

Statute agency recommends eliminating
<p>SECTION 17-3-85. Fiscal year-end disposition of unexpended appropriations for payment of private appointed counsel for counties without public defender corporations.</p> <p>At the end of each fiscal year all funds appropriated for counties without public defender corporations which have not been exhausted shall be combined into one fund and any and all claims of private appointed counsel in other counties remaining unpaid by virtue of the exhaustion of appropriated funds in those respective counties shall be paid on a pro rata basis until such fund is exhausted or until all claims are satisfied. After payment of the above, any funds remaining at the end of a fiscal year maintained by the Judicial Department shall revert to the general fund of the State at the end of that fiscal year.</p>
2018-19 Provisos which cover funding
<p>61.1 (INDEF: Defense of Indigents Formula) The amount appropriated in this act for "Defense of Indigents" shall be apportioned among counties in accord with Section 17-3-330 of the 1976 Code, but on a per capita basis and based upon the most current official decennial census of the United States; provided that no county shall receive funding in an amount less than the amount apportioned to it as of July 1, 2005. The level of contribution of each county as of July 1, 2001, must be maintained. No county shall be permitted to contribute less money than the amount the county contributed in the prior fiscal year. Within the amount of money established for indigent defense services, the State shall set aside \$3,000,000 (Death Penalty Trial Fund) annually for use of the defense in capital cases pursuant to Section 16-3-26 of the 1976 Code, for juveniles facing the possibility of a sentence of life without parole, and for the expenses of the operation of the Commission on Indigent Defense to include salaries and operations expenses of the Death Penalty Trial Division. The State also shall set aside \$2,500,000 annually to pay fees and expenses of private counsel appointed in noncapital cases pursuant to Section 17-3-50 (Conflict Fund). Of the funds generated from the fees imposed under Sections 14-1-206(C)(4), 14-1-207(C)(6) and 14-1-208(C)(6) and the application fee provided in Section 17-3-30(B), on a monthly basis, fifty percent must be deposited into the Death Penalty Trial Fund, fifteen percent must be deposited into the Conflict Fund, and the remaining funds each month must be apportioned among the counties' public defender offices pursuant to Section 17-3-330. At the end of each fiscal year any leftover funds shall carryover to the next fiscal year. All applications for the payment of fees and expenses in capital cases shall be applied for from the Death Penalty Trial Fund which shall be administered by the Commission on Indigent Defense. All applications for the payment of fees and expenses of private counsel or expenses of public defenders pursuant to Section 17-3-50 shall be applied for from the Conflict Fund administered by the Commission on Indigent Defense. Reimbursement in excess of the hourly rate and limit set forth in Section 17-3-50 is authorized only if the court certifies, in a written order with specific findings of fact, prior to the fees being incurred, that reimbursement in excess of the rates or limit is necessary to provide reimbursement adequate to ensure effective assistance of counsel and reimbursement in excess of the limit is appropriate because the services to be provided are reasonable and necessary. If prior approval by written order of the court is not obtained, no additional fees shall be paid under any circumstances. Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonable and necessary for the representation of the defendant, the court shall authorize the defendant's attorney to obtain such services on behalf of the defendant and shall authorize the payment, from funds available to the Commission on Indigent Defense, of fees and expenses not to exceed five hundred dollars as the court considers appropriate. Payment in excess of the five-hundred-dollar limit is</p>

authorized only if the court certifies, in a written order with specific findings of fact, prior to the expense being incurred, that payment in excess of the limit is appropriate because the services to be provided are reasonable and necessary to provide adequate defense. Payments shall be made from funds appropriated for this purpose from the Commission of Indigent Defense. If prior approval by written order of the court is not obtained, no additional expenses shall be paid under any circumstances. Indigent defense vouchers authorized in this provision must be reviewed and paid pursuant to procedures and policies established by the Commission on Indigent Defense. The commission shall provide a copy of the established procedures and policies to the Senate Finance Committee and the House Ways and Means Committee.

61.5. (INDEF: Carry Forward) To offset budget reductions, the Commission on Indigent Defense may carry forward and utilize any unencumbered balances available in the Appellate Conflict Fund and the SC Appellate Court Rule 608 Appointment Fund at the end of the prior fiscal year.

Law Change Recommendation #6 - S.C. Code Section 17-3-90

The agency recommends eliminating S.C. Code Section 17-3-90, which relates to voucher procedures for payment of services by private appointed counsel.⁶⁶ The agency asserts voucher procedures established by orders of the Supreme Court, budget provisos, and agency policies have superseded the procedure set forth in this statute.⁶⁷

Proposed language to implement this recommendation, and other relevant authorities, are below.

Statute Subcommittee recommends eliminating	Relevant other authorities
<p>SECTION 17-3-90. Vouchers for payment for services by private appointed counsel and for reimbursement of expenses; approval and submission for payment.</p> <p>Private, appointed counsel shall submit a voucher to the Office of Indigent Defense setting forth all details of the appointment for purposes of remuneration pursuant to Section 17-3-50 and reimbursement of expenses pursuant to Section 17-3-80, and the public defender shall do likewise pursuant to Section 17-3-80. It is the duty of the Office of Indigent Defense to present the voucher to the trial judge for approval and to transmit the same to the Comptroller General for payment to the appropriate party.</p>	<p>2018-19 Proviso:</p> <ul style="list-style-type: none">61.1 <p>Supreme Court Orders:</p> <ul style="list-style-type: none">Order dated September 29, 2006, published October 2, 2006: Procedures for the Processing of Indigent Defense VouchersMemorandum from Chief Justice Toal dated July 8, 2005: Ordering Additional Fees for Investigative, Expert, or Other Services for Appointed CounselMemorandum from Chief Justice Toal dated July 6, 2005: Ordering Additional Attorney's Fees for Appointed Counsel <p>Agency Policies:</p> <ul style="list-style-type: none">SCCID Voucher Payment Policy (Revised 4-25-2013)

Law Change Recommendation #8 - S.C. Code Section 17-3-510

The agency recommends revising the title of S.C. Code Section 17-3-510, which incorrectly states circuit public defenders are elected by the S.C. Prosecution Commission.⁶⁸

Proposed language to implement this recommendation is included below.

SECTION 17-3-5. Definitions.

As used in this chapter, the term:

(1) "Commission" means the Commission on Indigent Defense.

SECTION 17-3-510. Circuit Public Defender Selection Panel; county representation; nomination of Circuit Public Defender; election by South Carolina ~~Prosecution Coordination Commission~~ Commission on Indigent Defense.

(A) There is created in each judicial circuit in the State a Circuit Public Defender Selection Panel, the membership of which is composed of, and must be elected by, the active, licensed attorneys who reside within the counties of each judicial circuit. Each county in each judicial circuit must be represented by at least one member and the remaining members must be determined by equal weighting of county population based on the most recent decennial census and the most recent annual county appropriations to public defender operations according to the following formula: (1) percentage of distribution of population plus the percentage of distribution of appropriations for public defender operations divided by two and rounded to the nearest whole number; (2) the weighted values of each county multiplied by the number of remaining members in each Circuit Public Defender Selection Panel determines the number of additional members each county must have on the panel. Judicial circuits with three or less counties must have five members. Judicial circuits with four counties must have seven members. Judicial circuits with five counties must have nine members.

(B) A solicitor, assistant solicitor, an employee of a solicitor's office, or an employee of the South Carolina Prosecution Coordination Commission may not serve as a member of a Circuit Public Defender Selection Panel. Members of a Circuit Public Defender Selection Panel must reside in the judicial circuit in which they serve. Circuit Public Defender Selection Panel members shall serve for a term of five years. A vacancy for an appointed member must be in the same manner of the original appointment filled by the appointing authority.

(C) By majority vote of its membership, the Circuit Public Defender Selection Panel shall nominate a person to serve as the circuit public defender in the judicial circuit as provided in this article. The **commission shall, by majority vote of its members, accept or reject the nomination**, but may not substitute the name of another person. Initial appointments of circuit public defenders must be made in order for the first appointees to take office no later than one year from the effective date of this act, for a term of four years. A circuit public defender may be reappointed by the commission to serve successive terms following the same manner of the original appointment. The circuit public defender for each judicial circuit must be a full-time employee of the State and must be compensated and have the same benefits as the circuit solicitor. A circuit public defender may not engage in the private practice of law or another full-time business for profit.

(D) A circuit public defender may be removed for cause by a majority vote of the commission.

(E) If a vacancy occurs, by death, resignation, or otherwise, in the position of circuit public defender, the commission shall appoint an interim circuit public defender to serve until a replacement has been selected by the commission. The Circuit Public Defender Selection Panel shall nominate a replacement circuit public defender within three months of the occurrence of the vacancy. Selection of a replacement must be in the same manner as the original appointment.

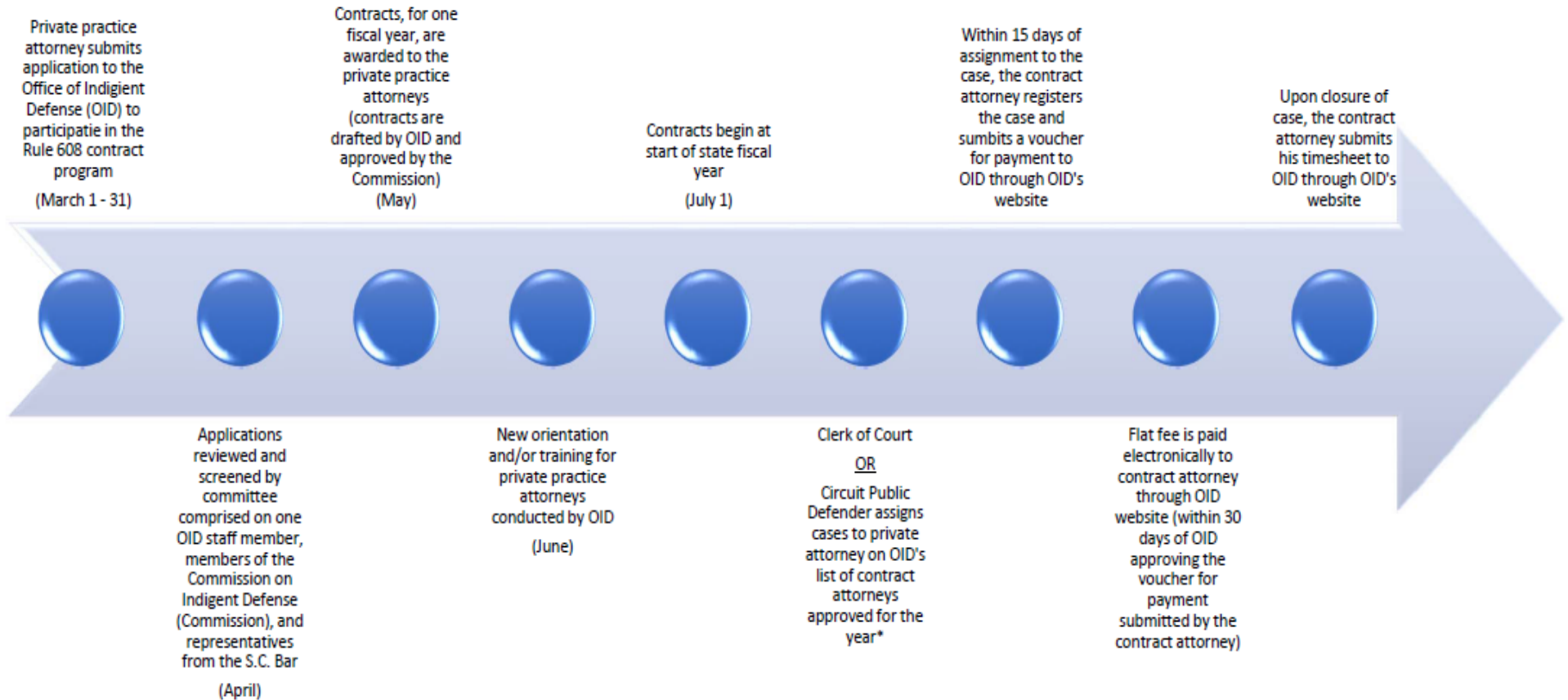
APPENDICES

Appendix A. Selection and Payment of Rule 608 Contract Attorneys

Figure 5 provides a flow chart which summarizes steps in the process related to contract attorneys.

Selection and Payment of Rule 608 Contract Attorneys

Flow Chart as of April 2018



***NOTE:** Clerk of Court assigns cases in post-conviction relief (PCR), sexually violent predator (SVP), and Family Court Cases if person is indigent. The Circuit Defender assigns cases in criminal matters if (1) the defendant was determined to be indigent, and (2) a Public Defender is appointed AND a conflict of interest exists that prevents the Public Defender from representing the defendant.

Figure 5. Flow chart summarizing steps in the process related to contract attorneys.⁶⁹

*Appendix B. Sample Contract for Criminal Representation (Rule 608
Contract Attorney)*

**AGREEMENT FOR
ATTORNEY SERVICES
(Criminal Conflicts)**

This Agreement entered into this _____ day of _____ by and
between the South Carolina Commission on Indigent Defense (SCCID)
and _____ (Attorney).

In consideration of the mutual covenants and promises contained herein, SCCID
and Attorney agree as follows:

I. TERM

a. Subject to the provisions for termination set forth below and in Section XI this
agreement will begin on the date this Agreement is signed by both parties and expires on
_____. SCCID reserves the right and authority in its sole discretion to terminate
this Agreement for any reason and at any time upon thirty (30) days notice to Attorney.
Upon thirty (30) days notice this Agreement shall be null and void and have no further
effect whatsoever. However any egregious conduct shall be grounds for immediate
termination of this Agreement. (See Termination Clause, Section XI)

II. SERVICES

a. SCCID contracts with Attorney for the representation of indigent clients in the
category or categories of cases and in the counties as set forth in Attachment A of this
Agreement (See Attachment A). If Attorney is excused by a Court from an appointment
for good cause shown Attorney does not relinquish the right to continue to receive
appointments as provided by Attachment A.

b. In performing the legal services described in this Agreement, Attorney at all times
shall comply with the requirements of the Rules of Professional Conduct, the South
Carolina Rules of Court (to include the Appellate Court Rules, Rules of Civil Procedure,
Rules of Criminal Procedure, Rules of Evidence, Family Court Rules, Rules of Probate
Court, Alternative Dispute Resolution Rules, Rules for the Administrative Law Court
Rules), orders or directives of the Courts of this State, applicable South Carolina statutes
and all of the uniform policies, guidelines and standards promulgated by SCCID, all of
which are hereby expressly incorporated in, merged and made a part of this contract in
each and every particular.

c. Attorney shall render to, and on behalf of the indigent clients he or she represents all
professional legal services reasonably required from the time of appointment to and
including a final adjudication or disposition. When appropriate Attorney agrees to timely
file and serve a notice of appeal or petition for review and to take such other actions as
may be required to protect the indigent client's interests in accordance with the South
Carolina Rules of Appellate Procedure and applicable statutory law. The Division of
Appellate Defense or such other counsel as the Court may appoint may prosecute the

appeal as appropriate. Attorney shall notify the Chief Attorney of the Division of Appellate Defense as soon as an appeal or petition for review has been filed and served, and promptly provide all pleadings and other necessary documents to the Division of Appellate Defense or other such counsel appointed by the Court.

d. In performing any work under this Agreement, Attorney shall provide competent representation to the indigent client. Competent representation requires the legal knowledge, skill, thoroughness and preparedness reasonably necessary for that representation. Attorney's business relationships outside of this agreement shall not interfere with the performance of the services specified herein.

e. Notification of Appointment: Within fifteen (15) days of being appointed to a case, Attorney must register the case on the SCCID website as required by the South Carolina Supreme Court (Order dated September 29, 2006) and in accordance with the policies and guidelines of SCCID. Failure to timely and fully register each assigned case as required, including any updates of required data may be grounds for termination of this Agreement, in the discretion of SCCID.

f. If appointment of Attorney is terminated due to the indigent client subsequently obtaining private counsel; or if the indigent client does not continue to qualify as indigent, Attorney shall still be entitled to compensation for fees and expenses properly and reasonably incurred.

g. If for any reason the Court permits Attorney to withdraw or if Attorney is otherwise removed from a case prior to full performance of the duties for reasons other than breach of duty or the provisions of Section XI, Attorney may receive compensation for Attorney's fees for work already satisfactorily performed and reasonably incurred. Subject to the attorney-client and the work-product privilege, if Attorney withdraws or is removed from the case Attorney shall deliver all files, notes, documents and research related to the representation of the client to the successor attorney within 15 days after receiving notice from the successor attorney.

h. Attorney agrees to maintain and to operate continuously throughout the term of this Agreement with at least the minimum number of staff required to deliver the legal services outlined herein.

III. COMPENSATION / EXPENSES/ EXPERT AND OTHER SERVICES

a. For services rendered SCCID agrees to pay a flat fee of \$900 (Nine Hundred Dollars) per case paid upon appointment and the attorney's subsequent registration of the case as described in II(c) followed by processing of payment through the Comptroller General's Office.

b. A case is defined as an action in which an Attorney has been appointed to represent a client under the terms of this Agreement. A newly assigned case is each new unique

client, including a former client with new charges, petitions, or other cause of action but excluding a client with new charges, petitions, or other causes of action that are appointed to Attorney pursuant to this Agreement.

c. Attorney understands and agrees that case related expenses are included in the \$900 flat fee. Attorney agrees to pay all expenses incidental to the performance of this Agreement including but not limited to all salaries, overhead, and all routine and necessary cost and expenses incurred in providing contract services, including routine travel expenses.

d. Outside costs and expenses such as expenses for expert witnesses, investigators, scientific tests and other reasonable and necessary expenses Attorney reasonably believes are necessary for a proper representation of client shall be applied for and reimbursed in accordance with laws of the State of South Carolina and the policies of SCCID. Attorney expressly understands that such expenses must be approved by the court prior to being incurred.

e. In the event Contractor is assigned to an extraordinary case, where the issues presented requires extraordinary time and effort for proper representation of the Client, Contractor may apply in writing to SCCID for additional compensation. Contractor shall immediately make this application to SCCID, in writing, once contractor identifies case may require extraordinary time and effort. A jury trial or contested adjudication in and of itself shall not be deemed extraordinary. However, at SCCID's sole discretion, extensive pretrial litigation, an extended jury trial or extended contested adjudication may be deemed extraordinary. In determining whether to approve a request for additional compensation in an extraordinary case SCCID shall consider the complexity of the case and other equitable factors including the availability and status of SCCID funds. To be considered an extraordinary case the offense charged/indicted must be a violent crime as identified in S.C. Code Section 16-1-60. The amount and timing of an additional compensation that is approved beyond the standard \$900 flat fee is at SCCID's sole discretion. However total compensation shall not exceed the statutory cap of \$3500 as established in S.C. Code Section 17-3-50(A).

IV. QUALIFICATIONS OF ATTORNEY

Attorney represents that he or she:

a. Is a member in good standing of the South Carolina Bar and will immediately notify SCCID in writing of any change in this status.

b. Possesses all municipal, county and state licenses which may be required in order to conduct business as an attorney in the counties and Judicial Circuits described in Attachment A; and that the same shall be kept current in all respects during the term of this Agreement and while any representation of a client is pending hereunder.

- c. Is qualified to provide effective and adequate legal representation to indigent persons he or she may represent and meets at least the minimum experience and continuing education requirements identified in the rules, regulations and guidelines promulgated by SCCID and the South Carolina Supreme Court. Attorney will also comply with any CLE requirements mandated by SCCID.
- d. Will immediately notify SCCID in writing of any disciplinary action(s) taken or any investigations commenced by the Office of Disciplinary Counsel.
- e. Will notify SCCID of all appointed cases handled by Attorney in which there is a judicial finding that the Attorney provided ineffective assistance of counsel.
- f. Attorney agrees to immediately notify SCCID if at any time during the period of this contract any claim, lawsuit or any other action (civil or criminal) becomes pending against attorney.

V. INDEPENDENT CONTRACTOR

- a. The parties agree that this Agreement does not create the relationship of employer and employee. This Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between SCCID and Attorney. Attorney is, and shall at all times be, deemed an independent contractor and shall be wholly responsible for the manner in which Attorney performs the services required by the terms of this Agreement. Attorney exclusively assumes responsibility for the acts of Attorney's employees, agents, subcontractors, and all others acting at the direction of or on behalf of Attorney, as they relate to the services to be provided under this Agreement. Attorney and Attorney's agents and employees shall not be entitled to any rights or privileges as if employees of SCCID or the State of South Carolina, including but not limited to, compensation, insurance and unemployment insurance. It shall be the sole responsibility of Attorney to comply with all applicable federal, state, county, and municipal statutes, ordinances, rules, and regulations in the performance of Attorney's obligations under this Agreement.

VI. NO ASSIGNMENT

- a. Attorney shall not delegate or assign his or her obligations under this Agreement, whether in whole or in part, without the prior written consent of SCCID. Attorney shall not assign any monies due or to become due to Attorney under this Agreement without the prior written consent of SCCID.

VII. NO PROHIBITION ON PRIVATE PRACTICE

- a. Nothing in this Agreement shall preclude Attorney from representing privately retained clients, including clients involved in cases of a similar nature who are not indigent. Attorney shall not be prohibited from engaging in the private practice of

law, provided that no private case shall be accepted that may cause a conflict of interest with a case appointed to Attorney under this Agreement.

VIII. EXTERNAL COMPENSATION

a. Attorney agrees that compensation for matters directly assigned to Attorney and covered under this Agreement shall be the sole compensation received by Attorney for the particular matters. Attorney shall not be precluded from accepting representation of indigents for matters for which he or she is not directly appointed (i.e., on behalf of other counsel) and for matters not covered by this Agreement.

IX. INDEMNIFICATION/ LEGAL MALPRACTICE INSURANCE

a. Attorney shall indemnify, defend, save, and hold harmless SCCID and the State of South Carolina, their officials, officers, agents, and employees from and against any and all claims, liabilities, losses, and/or causes of action including court costs and attorney's fees that may hereafter at any time be made or brought by anyone for the purpose of enforcing any claim on account of any injury or damage allegedly caused or occurring to any person or property which may arise, in whole or in part, whether intentional or unintentional, from any willful misconduct, or negligent act or omission of Attorney, Attorney's associates, law partners, agents, or employees during performance under this Agreement.

For each attorney furnishing services under this Agreement, prior to the commencement of any representation of a client hereunder, Attorney shall furnish evidence of legal malpractice insurance coverage that is current and in effect of at least \$300,000 per claim/\$500,000 aggregate and Attorney shall retain such insurance for any liability arising out of the services provided even after the attorney is no longer under contract with SCCID.

X. RECORD RETENTION/AUDIT

a. Attorney shall keep detailed records to enable SCCID or its agents to verify all costs, expenses and Attorney's time expended representing all indigent clients in cases appointed under this Agreement and shall make such records available to SCCID and its agents at any reasonable time. The records include supporting documentation necessary to adequately evaluate and substantiate payments made under this Agreement. SCCID and/ or its agents may, at its discretion, audit or inspect Attorney's books and financial records relating to services under this Agreement at any and all reasonable times. Attorney agrees to retain and to make available for inspections, upon reasonable notice, all books, statements, ledgers and other financial records relating to services under this Agreement for a period of five (5) years from the date of each payment, or until all Federal or State audits that may relate to each payment are complete for the applicable fiscal year, whichever is later. All financial records shall be made available to SCCID and/ or its agents at Attorney's place of business. The recordkeeping duties under this Agreement are separate and apart from recordkeeping requirements under Rule 407,

SCACR (the Rules of Professional Conduct) and Rule 417, SCACR (Financial Recordkeeping).

XI. TERMINATION/ CONTRACT EXPIRATION

This Agreement may be terminated as follows:

- a. In addition to any other remedy authorized by law, SCCID shall have the right to terminate this Agreement upon thirty (30) days notice to Attorney if in its sole opinion Attorney or Attorney's agents or employees fail to comply with any of the terms of this Agreement to include those terms expressly incorporated and merged into this Agreement. Such failure shall constitute a material breach of this Agreement by Attorney. In the event of breach of duty in a case by Attorney, Attorney shall not be entitled to payment of Attorney's fees and shall reimburse SCCID for fees already received as an initial flat fee except as may be provided by court order. Any egregious conduct shall be grounds for immediate termination.
- b. In the event Attorney is unable to perform this Agreement due to permanent or temporary disability, injury, continuing disabling sickness, or for other similar causes beyond the control of Attorney, then this Agreement may be terminated. In such event Attorney shall take appropriate steps to withdraw from all appointed cases, including filing motions to withdraw as required by South Carolina law. If Attorney is permitted to withdraw or is terminated in accordance with Section XI(a) from an appointed case, work materials that are not protected by the attorney/client privilege and the work-product privilege shall be turned over to such attorneys as may be subsequently appointed by the Court.
- c. SCCID may, in its sole and absolute discretion, terminate this Agreement for any reason upon thirty (30) days notice to Attorney. Attorney may, in Attorney's absolute discretion, terminate this Agreement without cause upon thirty (30) days notice to SCCID provided that Attorney shall be responsible for all existing obligations to clients already appointed to pursuant to this Agreement.
- d. Attorney understands that because the flat fee compensation is intended to cover the entire case any termination in accordance with Section XI(c) or by expiration of this Agreement does not affect the existing obligations to clients already assigned pursuant to this Agreement and attorneys continuing duty shall continue until final adjudication or disposition as described in Section II(c).
- e. Notice of termination of this Agreement must be given to the other party in writing, sent by certified or registered United States mail, with return receipt requested, addressed to the party for whom it is intended, delivery restricted to the addressee, at the place last specified for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following for giving written notice:

FOR SCCID

South Carolina Commission on Indigent Defense
Attn: J. Hugh Ryan (General Counsel)
PO BOX 11433
Columbia, SC 29211-1433

FOR ATTORNEY

Print name

Address

XII. NO WAIVER/GOVERNING LAW

a. All rights hereunder are cumulative, not alternative, and are in addition to any other rights given by law. The validity, construction, and interpretation of this Agreement shall be governed by the laws of the State of South Carolina and the South Carolina Constitution. Venue for all actions arising from or related to this Agreement shall be in Richland County, South Carolina.

XIII. SEVERABILITY

a. Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as "part") of this Agreement that is judged, held, found, or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this Agreement, and the remainder of this Agreement shall continue to be of full force and effect. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this Agreement shall not affect any other part of this Agreement, and the remainder of this Agreement shall continue to be of full force and effect.

XIV. AMENDMENT OR RENEWAL OF AGREEMENT

a. This Agreement expresses the entirety of the understandings of the parties concerning all matters covered. No renewal of this Agreement, or addition to, or alteration of, the terms of this Agreement, whether by written or verbal understanding of the parties, their officers, agents, or employees shall be valid unless in the form of a written amendment to this Agreement and formally approved by the parties.

XV. MISCELLANEOUS PROVISIONS

a. SCCID's and Attorney's performance under this Agreement are contingent upon appropriation by the Legislature, county funding and any other funding sources necessary to fund the performance of this contract.

b. SCCID's performance under this Agreement is contingent upon written approval of the South Carolina Attorney General in accordance with applicable South Carolina law.

c. The headings used in this Agreement are for illustrative purposes and are not a limitation of any of the rights and obligations of the parties.

d. Attorney shall affix Attorney's name, and Bar number on all communications addressed to SCCID. Attorney shall keep SCCID informed at all times of Attorney's current name and address, telephone and facsimile numbers, e-mail address and tax identification number.

XVI. ENTIRE AGREEMENT

a. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms thereof shall be predicated upon any prior representations or agreements whether oral or written. This is the entire agreement of the parties. It may be changed only by an agreement in writing signed by both parties.

STATE OF SOUTH CAROLINA
COMMISSION ON INDIGENT DEFENSE BY:

J. Hugh Ryan III, General Counsel

DATE: _____

ATTEST:_____.

ATTORNEY

Signature: _____

Print name: _____

South Carolina Bar No.: _____

Attorney's Tax ID No.: _____

Attorney's E-Mail Address: _____

Mailing Address:_____.

Fax number _____

Cell number _____

DATE: _____

ATTEST:_____.

Attachment A

**(to agreement between SCCID and contracting attorney, dated the _____ day of
_____).**

Contracting Attorney _____

SC Bar number: _____

Counties covered _____

*Appendix C. Sample Contract for Family Court Representation (Rule 608
Contract Attorney)*

AGREEMENT FOR ATTORNEY SERVICES

This Agreement entered into this _____ day of _____ by and between the South Carolina Commission on Indigent Defense (SCCID) and _____ (Attorney).

In consideration of the mutual covenants and promises contained herein, SCCID and Attorney agree as follows:

I. TERM

a. Subject to the provisions for termination set forth below and in Section XI this agreement will begin on the date this Agreement is signed by both parties and expires on _____. SCCID reserves the right and authority in its sole discretion to terminate this Agreement for any reason and at any time upon thirty (30) days notice to Attorney. Upon thirty (30) days notice this Agreement shall be null and void and have no further effect whatsoever. However any egregious conduct shall be grounds for immediate termination of this Agreement. (See Termination Clause, Section XI)

II. SERVICES

a. SCCID contracts with Attorney for the representation of indigent clients in the category or categories of cases and in the counties as set forth in Attachment A of this Agreement (See Attachment A). If Attorney is excused by a Court from an appointment for good cause shown Attorney does not relinquish the right to continue to receive appointments as provided by Attachment A.

b. In performing the legal services described in this Agreement, Attorney at all times shall comply with the requirements of the Rules of Professional Conduct, the South Carolina Rules of Court (to include the Appellate Court Rules, Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Evidence, Family Court Rules, Rules of Probate Court, Alternative Dispute Resolution Rules, Rules for the Administrative Law Court Rules), orders or directives of the Courts of this State, applicable South Carolina statutes and all of the uniform policies, guidelines and standards promulgated by SCCID, all of which are hereby expressly incorporated in, merged and made a part of this contract in each and every particular.

c. Attorney shall render to, and on behalf of the indigent clients he or she represents all professional legal services reasonably required from the time of appointment to and including a final adjudication or disposition. When appropriate Attorney agrees to timely file and serve a notice of appeal or petition for review and to take such other actions as may be required to protect the indigent client's interests in accordance with the South Carolina Rules of Appellate Procedure and applicable statutory law. The Division of Appellate Defense or such other counsel as the Court may appoint may prosecute the appeal as appropriate. Attorney shall notify the Chief Attorney of the Division of

Appellate Defense as soon as an appeal or petition for review has been filed and served, and promptly provide all pleadings and other necessary documents to the Division of Appellate Defense or other such counsel appointed by the Court.

d. In performing any work under this Agreement, Attorney shall provide competent representation to the indigent client. Competent representation requires the legal knowledge, skill, thoroughness and preparedness reasonably necessary for that representation. Attorney's business relationships outside of this agreement shall not interfere with the performance of the services specified herein.

e. Notification of Appointment: Within fifteen (15) days of being appointed to a case, Attorney must register the case on the SCCID website as required by the South Carolina Supreme Court (Order dated September 29, 2006) and in accordance with the policies and guidelines of SCCID. Failure to timely and fully register each assigned case as required, including any updates of required data may be grounds for termination of this Agreement, in the discretion of SCCID.

f. If appointment of Attorney is terminated due to the indigent client subsequently obtaining private counsel; or if the indigent client does not qualify or continue to qualify as indigent, Attorney shall still be entitled only to compensation for fees and expenses properly and reasonably incurred.

g. If for any reason the Court permits Attorney to withdraw or if Attorney is otherwise removed from a case prior to full performance of the duties for reasons other than breach of duty or the provisions of Section XI, Attorney may receive compensation for Attorney's fees, costs and expenses for work already satisfactorily performed and reasonably incurred. Subject to the attorney-client and the work-product privilege, if Attorney withdraws or is removed from the case Attorney shall deliver all files, notes, documents and research related to the representation of the client to the successor attorney within 15 days after receiving notice from the successor attorney. The successor attorney shall bear the cost of transmitting all files, notes, documents and research; however such costs may be reimbursable if in accordance with SCCID policy.

h. Attorney agrees to maintain and to operate continuously throughout the term of this Agreement with at least the minimum number of staff required to deliver the legal services outlined herein.

i. Attorney shall report within 5 days to SCCID the continuance of any proceedings and the reason for that continuance.

III. COMPENSATION / EXPENSES/ EXPERT AND OTHER SERVICES

a. For services rendered SCCID agrees to pay a flat fee of \$800 (Eight Hundred Dollars) per case paid upon appointment and the attorney's subsequent registration of the case as described in II(c) followed by processing of payment through the Comptroller General's Office.

b. A case is defined as an action in which an Attorney has been appointed to represent a client under the terms of this Agreement. A newly assigned case is each new unique client, including a former client with new charges, petitions, or other cause of action but excluding an existing client with new charges, petitions, or other causes of action that are appointed to Attorney pursuant to this Agreement.

c. Attorney understands and agrees that case related expenses are included in the \$800 flat fee. Attorney agrees to pay all expenses incidental to the performance of this Agreement including but not limited to all salaries, overhead, and all routine and necessary cost and expenses incurred in providing contract services, including routine travel expenses.

d. Outside costs and expenses such as expenses for expert witnesses, investigators, scientific tests and other reasonable and necessary expenses Attorney reasonably believes are necessary for a proper representation of client shall be applied for and reimbursed in accordance with laws of the State of South Carolina and the policies of SCCID. Attorney expressly understands that such expenses must be approved by the court prior to being incurred.

IV. QUALIFICATIONS OF ATTORNEY

Attorney represents that he or she:

a. Is a member in good standing of the South Carolina Bar and will immediately notify SCCID in writing of any change in this status.

b. Possesses all municipal, county and state licenses which may be required in order to conduct business as an attorney in the counties and Judicial Circuits described in Attachment A; and that the same shall be kept current in all respects during the term of this Agreement and while any representation of a client is pending hereunder.

c. Is qualified to provide effective and adequate legal representation to indigent persons he or she may represent and meets at least the minimum experience and continuing education requirements identified in the rules, regulations and guidelines promulgated by SCCID and the South Carolina Supreme Court. Attorney will also comply with any CLE requirements mandated by SCCID.

d. Will immediately notify SCCID in writing of any disciplinary action(s) taken or any investigations commenced by the Office of Disciplinary Counsel.

e. Will notify SCCID of all appointed cases handled by Attorney in which there is a judicial finding that the Attorney provided ineffective assistance of counsel.

f. Attorney agrees to immediately notify SCCID if at any time during the period of this contract any claim, lawsuit or any other action (civil or criminal) becomes pending against attorney.

V. INDEPENDENT CONTRACTOR

a. The parties agree that this Agreement does not create the relationship of employer and employee. This Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between SCCID and Attorney. Attorney is, and shall at all times be, deemed an independent contractor and shall be wholly responsible for the manner in which Attorney performs the services required by the terms of this Agreement. Attorney exclusively assumes responsibility for the acts of Attorney's employees, agents, subcontractors, and all others acting at the direction of or on behalf of Attorney, as they relate to the services to be provided under this Agreement. Attorney and Attorney's agents and employees shall not be entitled to any rights or privileges as if employees of SCCID or the State of South Carolina, including but not limited to, compensation, insurance and unemployment insurance. It shall be the sole responsibility of Attorney to comply with all applicable federal, state, county, and municipal statutes, ordinances, rules, and regulations in the performance of Attorney's obligations under this Agreement.

VI. NO ASSIGNMENT

a. Attorney shall not delegate or assign his or her obligations under this Agreement, whether in whole or in part, without the prior written consent of SCCID. Attorney shall not assign any monies due or to become due to Attorney under this Agreement without the prior written consent of SCCID.

VII. NO PROHIBITION ON PRIVATE PRACTICE

a. Nothing in this Agreement shall preclude Attorney from representing privately retained clients, including clients involved in cases of a similar nature who are not indigent. Attorney shall not be prohibited from engaging in the private practice of law, provided that no private case shall be accepted that may cause a conflict of interest with a case appointed to Attorney under this Agreement.

VIII. EXTERNAL COMPENSATION

a. Attorney agrees that compensation for matters directly assigned to Attorney and covered under this Agreement shall be the sole compensation received by Attorney for the particular matters. Attorney shall not be precluded from accepting representation of indigents for matters for which he or she is not directly appointed (i.e., on behalf of other counsel) and for matters not covered by this Agreement.

IX. INDEMNIFICATION/ LEGAL MALPRACTICE INSURANCE

a. Attorney shall indemnify, defend, save, and hold harmless SCCID and the State of South Carolina, their officials, officers, agents, and employees from and against any and all claims, liabilities, losses, and/or causes of action including court costs and attorney's fees that may hereafter at any time be made or brought by anyone for the purpose of enforcing any claim on account of any injury or damage allegedly caused or occurring to any person or property which may arise, in whole or in part, whether intentional or unintentional, from any willful misconduct, or negligent act or omission of Attorney, Attorney's associates, law partners, agents, or employees during performance under this Agreement.

For each attorney furnishing services under this Agreement, prior to the commencement of any representation of a client hereunder, Attorney shall furnish evidence of legal malpractice insurance coverage that is current and in effect of at least \$300,000 per claim/\$500,000 aggregate and Attorney shall retain such insurance for any liability arising out of the services provided even after the attorney is no longer under contract with SCCID.

X. RECORD RETENTION/AUDIT

a. Attorney shall keep detailed records to enable SCCID or its agents to verify all costs, expenses and Attorney's time expended representing all indigent clients in cases appointed under this Agreement and shall make such records available to SCCID and its agents at any reasonable time. The records include supporting documentation necessary to adequately evaluate and substantiate payments made under this Agreement. SCCID and/ or its agents may, at its discretion, audit or inspect Attorney's books and financial records relating to services under this Agreement at any and all reasonable times.

Attorney agrees to retain and to make available for inspections, upon reasonable notice, all books, statements, ledgers and other financial records relating to services under this Agreement for a period of five (5) years from the date of each payment, or until all Federal or State audits that may relate to each payment are complete for the applicable fiscal year, whichever is later. All financial records shall be made available to SCCID and/ or its agents at Attorney's place of business. The recordkeeping duties under this Agreement are separate and apart from recordkeeping requirements under Rule 407, SCACR (the Rules of Professional Conduct) and Rule 417, SCACR (Financial Recordkeeping).

XI. TERMINATION/ CONTRACT EXPIRATION

This Agreement may be terminated as follows:

a. In addition to any other remedy authorized by law, SCCID shall have the right to terminate this Agreement upon thirty (30) days notice to Attorney if in its sole opinion Attorney or Attorney's agents or employees fail to comply with any of the terms of this Agreement to include those terms expressly incorporated and merged into this Agreement. Such failure shall constitute a material breach of this Agreement by Attorney.

In the event of breach of duty in a case by Attorney, Attorney shall not be entitled to payment of Attorney's fees and shall reimburse SCCID for fees already received as an initial flat fee except as may be provided by court order. Any egregious conduct shall be grounds for immediate termination.

b. In the event Attorney is unable to perform this Agreement due to permanent or temporary disability, injury, continuing disabling sickness, or for other similar causes beyond the control of Attorney, then this Agreement may be terminated. In such event Attorney shall take appropriate steps to withdraw from all appointed cases, including filing motions to withdraw as required by South Carolina law. If Attorney is permitted to withdraw or is terminated in accordance with Section XI(a) from an appointed case, work materials that are not protected by the attorney/client privilege and the work-product privilege shall be turned over to such attorneys as may be subsequently appointed by the Court.

c. SCCID may, in its sole and absolute discretion, terminate this Agreement upon thirty (30) days notice to Attorney. Attorney may, in Attorney's absolute discretion, terminate this Agreement without cause upon thirty (30) days notice to SCCID provided that Attorney shall be responsible for all existing obligations to clients already appointed to pursuant to this Agreement.

d. Attorney understands that because the flat fee compensation is intended to cover the entire case any termination in accordance with Section XI(c) or by expiration of this Agreement does not affect the existing obligations to clients already assigned pursuant to this Agreement and attorneys continuing duty shall continue until final adjudication or disposition as described in Section II(c).

e. Notice of termination of this Agreement must be given to the other party in writing, sent by certified or registered United States mail, with return receipt requested, addressed to the party for whom it is intended, delivery restricted to the addressee, at the place last specified for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following for giving written notice:

FOR SCCID

South Carolina Commission on Indigent Defense
Attn: J. Hugh Ryan (General Counsel)
PO BOX 11433
Columbia, SC 29211-1433

FOR ATTORNEY

Print name

Address

XII. NO WAIVER/GOVERNING LAW

a. All rights hereunder are cumulative, not alternative, and are in addition to any other rights given by law. The validity, construction, and interpretation of this Agreement shall be governed by the laws of the State of South Carolina and the South Carolina Constitution. Venue for all actions arising from or related to this Agreement shall be in Richland County, South Carolina.

XIII. SEVERABILITY

a. Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as “part”) of this Agreement that is judged, held, found, or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this Agreement, and the remainder of this Agreement shall continue to be of full force and effect. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this Agreement shall not affect any other part of this Agreement, and the remainder of this Agreement shall continue to be of full force and effect.

XIV. AMENDMENT OR RENEWAL OF AGREEMENT

a. This Agreement expresses the entirety of the understandings of the parties concerning all matters covered. No renewal of this Agreement, or addition to, or alteration of, the terms of this Agreement, whether by written or verbal understanding of the parties, their officers, agents, or employees shall be valid unless in the form of a written amendment to this Agreement and formally approved by the parties.

XV. MISCELLANEOUS PROVISIONS

a. SCCID’s and Attorney’s performance under this Agreement are contingent upon appropriation by the Legislature, county funding and any other funding sources necessary to fund the performance of this contract.

b. SCCID’s performance under this Agreement is contingent upon written approval of the South Carolina Attorney General in accordance with applicable South Carolina law.

c. The headings used in this Agreement are for illustrative purposes and are not a limitation of any of the rights and obligations of the parties.

d. Attorney shall affix Attorney’s name, and Bar number on all communications addressed to SCCID. Attorney shall keep SCCID informed at all times of Attorney’s current name and address, telephone and facsimile numbers, e-mail address and tax identification number.

XVI. ENTIRE AGREEMENT

a. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms thereof shall be predicated upon any prior representations or agreements whether oral or written. This is the entire agreement of the parties. It may be changed only by an agreement in writing signed by both parties.

STATE OF SOUTH CAROLINA
COMMISSION ON INDIGENT DEFENSE BY:

J. Hugh Ryan III, General Counsel

DATE: _____

ATTEST:_____.

ATTORNEY

Signature: _____

Print name: _____

South Carolina Bar No.: _____

Attorney's Tax ID No.: _____

Attorney's E-Mail Address: _____

Mailing Address:_____.

Fax number _____

DATE: _____

ATTEST:_____.

Attachment A

**(to agreement between SCCID and contracting attorney, dated the _____ day of
_____).**

Contracting Attorney _____

SC Bar number: _____

Counties covered _____

Categories of Cases:

Family Court (TPR, Abuse and Neglect)

Appendix D. Performance Standards for Public Defenders and Assigned Counsel (Non-Capital)

Appendix D includes performance standards for public defenders and assigned counsel (non-capital) that were formally adopted by the S.C. Commission on Indigent Defense on June 7, 2013, effective July 1, 2013.

**South Carolina Commission on Indigent Defense
Performance Standards for Public Defenders and Assigned Counsel
(Non-Capital)
Effective Date July 1, 2013**

The following Performance Standards for Public Defenders and Assigned Counsel (non-Capital) were formally adopted by the SC Commission on Indigent Defense on June 7, 2013, effective July 1, 2013. An additional set of Performance Standards for Indigent Defense in Juvenile Cases was adopted by the Commission on June 7, 2013, effective July 1, 2013, which are intended to supplement the within standards.

These performance standards are not intended to provide a new basis for a claim of ineffective assistance of counsel. They are benchmarks taken from existing national standards, and do not and cannot redefine the existing precedents that set forth the basis for determining when reversible error has occurred.

Guideline 1.1 Role of Defense Counsel

(a) The paramount obligation of criminal defense counsel is to provide zealous and quality representation to their clients at all stages of the criminal process. Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court. Once representation has been undertaken, the functions and duties of defense counsel are the same whether defense counsel is assigned, privately retained, or serving in a legal aid or defender program.

(b) Counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused.

(c) Defense counsel should seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to defense counsel's attention, he or she should stimulate efforts for remedial action.

Comment

The lawyer should be familiar with the Rule 402, SCACR.

Guideline 1.2 Education, Training and Experience of Defense Counsel

(a) To provide quality representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure, including but not limited to Federal Constitutional Law, South Carolina Constitutional Law, the South Carolina Rules of Criminal Procedure, the South Carolina Rules of Evidence, Administrative Orders of the Supreme Court, and the

Administrative Case Management Order applicable in the jurisdiction where the case is pending. Counsel has a continuing obligation to stay abreast of changes and developments in the law, attend trial advocacy training, and participate in bar sponsored and office mentoring programs. Where appropriate, counsel should also be informed of the practices of the specific judge before whom a case is pending.

(b) Prior to handling a criminal matter, counsel should have sufficient experience or training to provide quality representation.

(c) Counsel should be familiar with rules of error preservation for purposes of perfecting the record for effective appellate review.

Comment

This obligation is consistent with Rule 402, Rule 1.1, RPC (Competence).

Guideline 1.3 General Duties of Defense Counsel

(a) Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations.

(b) Counsel has an affirmative duty to seek out and identify all potential and actual conflicts of interest that would impair counsel's ability to represent a client. Where appropriate, counsel is obliged to seek resolution on any potential conflicts.

(c) Defense counsel should act with reasonable diligence and promptness in representing a client.

(d) Defense counsel should avoid unnecessary delay in the disposition of cases. Defense counsel should be punctual in attendance in court and in the submission of all motions, briefs, and other papers. Defense counsel should emphasize to the client and all witnesses the importance of punctuality in attendance in court.

(e) Defense counsel should not intentionally misrepresent facts or otherwise mislead the court.

(f) Defense counsel should not intentionally use procedural devices for delay for which there is no legitimate basis.

(g) Counsel has the obligation to keep the client informed of the progress of the case.

Comment

Paragraph (a) concerns the lawyer's workload. Comment 2 to Rule 402, Rule 1.3 (diligence) provides, "A lawyer's work load must be controlled so that each matter can be handled competently." A lawyer is not relieved of this obligation by virtue of his/her status as a public defender. *McKnight v. State* 378 S.C. 33, 661 S.E.2d 354 (2008) (held ineffective assistance of counsel when public defender's excessive caseload prevented counsel from retaining necessary expert); and *In re Sturkey* 376 S.C. 286, 657 S.E.2d 465 (2008) (public defender's excessive caseload does not relieve counsel of the obligations of representation). See S.C. Bar Ethics Advisory Opinion 2004-12 (interpreting Rule 407, SCACR, Rules 1.1, 1.3, 1.4, 1.13(b), 1.16, and 5.1, SCRPC).

Guideline 2.1 General Obligations of Counsel Regarding Pretrial Release

The attorney has an obligation to attempt to secure the pretrial release of the client under the conditions most favorable and acceptable to the client.

Guideline 2.2 Client Interview(s)

(a) *Preparation:* Prior to conducting the initial interview the attorney, should, where possible:

(1) be familiar with the elements of the offense and the potential punishment, where the charges against the client are already known;

(2) obtain copies of any relevant documents which are available, including copies of any charging documents, bail issues concerning pretrial release, and law enforcement reports that might be available;

(3) be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

(4) be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release;

(5) be familiar with any procedures available for reviewing the trial judge's setting of bail.

(b) *The Interview:*

(1) The purpose of the client interview is both to acquire information from the client concerning pretrial release and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, be overcome.

(2) Information that should be acquired includes, but is not limited to:

(A) the client's ties to the community, including the length of time he or she has lived at the current and former addresses, family relationships, immigration status (if applicable), employment record and history;

(B) the client's physical and mental health, educational and armed services records;

(C) the client's immediate medical needs;

(D) the client's past criminal record, if any, including arrests and convictions for adult

and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges and also whether he or she is on probation or parole and the client's past or present performance under supervision;

(E) the ability of the client to meet any financial conditions of release;

(F) the names of individuals or other sources that counsel can contact to verify the information provided by the client.

(3) Information to be provided the client includes, but is not limited to:

(A) an explanation of the procedures and conditions of pretrial release;

(B) an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney; client should be informed of the dangers of conversing with cellmates, family, friends, jail personnel or any other third person, as well as telephone conversations, written correspondence, and the use of electronic communications;

(C) the charges and the potential penalties;

(D) a general procedural overview of the progression of the case, where possible;

(c) *Supplemental Information:*

Whenever possible, counsel should use the client interview to gather additional information relevant to preparation of the defense. Such information may include, but is not limited to:

(1) the facts surrounding the charges against the client;

(2) any evidence of improper police investigative practices or prosecutorial conduct which affects the client's rights;

(3) any possible witnesses who should be located;

(4) any evidence that should be preserved;

(5) where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense;

(6) potential direct and collateral consequences of the charges.

Guideline 2.3 Pretrial Release Proceedings

(a) Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.

(b) Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

(c) If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

Guideline 3.1 Presentment and Arraignment (Space Reserved)

Guideline 3.2 Preliminary Hearing

(a) Where the client is entitled to a preliminary hearing, the attorney should take steps to see

that the hearing is timely requested and conducted unless there are strategic reasons for not doing so.

- (b) In preparing for the preliminary hearing, the attorney should become familiar with:
 - (1) the elements of each of the offenses alleged;
 - (2) legal standards for establishing probable cause;
 - (3) factual information which is available concerning probable cause.

Guideline 3.3 Prosecution Requests for Non-Testimonial Evidence

The attorney should be familiar with the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars and physical specimens), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the record of the proceedings required to be maintained.

Comment

Counsel should be familiar with relevant legal precedent, including but not limited to *Schmerber v. California*, 384 U.S. 757 (1966); *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006); and S.C. Code Ann. §17-13-140.

Guideline 4.1 Investigation

(a) Counsel has a duty to conduct an independent investigation regardless of the accused's admissions or statements to the lawyer of facts constituting guilt. The investigation should be conducted as promptly as possible.

(b) Sources of investigative information may include the following:

(1) Charging documents

Copies of all charging documents in the case should be obtained and examined to determine the specific charges that have been brought against the accused. The relevant statutes and precedents should be examined to identify:

- (A) the elements of the offense(s) with which the accused is charged;
- (B) the defenses, ordinary and affirmative, that may be available;
- (C) any defects in the charging documents, constitutional or otherwise.

(2) the accused

An in-depth interview of the client should be conducted as soon as possible and appropriate. The interview with the client should be used to:

- (A) seek information concerning the incident or events giving rise to the charge(s) and improper police investigative practices or prosecutorial conduct which affect the client's rights;
- (B) explore the existence of other potential sources of information relating to the offense;

(C) collect information relevant to sentencing.

(3) *potential witnesses*

Counsel should consider the interview of potential witnesses, including any complaining witnesses and others adverse to the accused. If the attorney conducts such interviews of potential witnesses, he or she should attempt to do so in the presence of a third person who will be available, if necessary, to testify as a defense witness at trial. Alternatively, counsel should have an investigator conduct such interviews.

(4) *evidence favorable to the client*

Counsel should obtain and secure all evidence favorable to the client, whether it pertains to innocence, reduction in charges, or mitigation for sentencing.

(5) *the police and prosecution*

Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless a sound tactical reason exists for not doing so.

(6) *physical evidence*

Where appropriate, counsel should make a prompt request to the police or investigative agency for access to physical evidence or expert reports relevant to the offense or sentencing.

(7) *the scene*

Where appropriate, counsel should attempt to view the scene of the alleged offense. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions).

(8) *expert and investigative assistance*

Counsel should secure the assistance of experts and investigators where it is necessary or appropriate to:

- (A) the preparation of the defense;
- (B) adequate understanding of the prosecution's case;
- (C) rebut the prosecution's case.

Guideline 4.2 Formal and Informal Discovery

Counsel has a duty to pursue as soon as practicable discovery procedures provided by The South Carolina Rules of Criminal Procedure, *Brady v. Maryland*, and the Administrative Case Management Order of the jurisdiction where the charge is pending and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests will trigger reciprocal discovery obligations.

Guideline 4.3 Theory of the Case

During investigation and trial preparation, counsel should develop and continually reassess a theory of the case.

Guideline 5.1 The Decision to File Pretrial Motions

(a) Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the applicable law may entitle the defendant to relief. The decision to file

pretrial motions should be made after thorough investigation, and after considering the applicable law in light of the circumstances of each case. Among the issues that counsel should consider addressing in a pretrial motion are:

- (1) the pretrial custody of the accused;
- (2) the constitutionality of the implicated statute or statutes;
- (3) the potential defects in the charging process;
- (4) the sufficiency of the charging document;
- (5) the propriety and prejudice of any joinder of charges or defendants in the charging document;
- (6) the discovery obligations of the prosecution and the reciprocal discovery obligations of the defense;
- (7) the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding or additional state constitutional provisions, including:
 - (A) the fruits of illegal searches or seizures;
 - (B) involuntary statements or confessions;
 - (C) statements or confessions obtained in violation of the accused's right to counsel, or privilege against self-incrimination;
 - (D) unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification.
- (8) suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
- (9) access to resources which or experts who may be denied to an accused because of his or her indigence;
- (10) the defendant's right to a speedy trial;
- (11) the defendant's right to a continuance in order to adequately prepare his or her case;
- (12) matters of trial evidence which may be appropriately litigated by means of a pretrial motion *in limine*;
- (13) matters of trial or courtroom procedure.

(b) Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the defendant's rights against later claims of waiver or procedural default. In making this decision, counsel should remember that a motion may have many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

- (1) the time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;
- (2) changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted;
- (3) later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

Guideline 5.2 Filing and Arguing Pretrial Motions

(a) Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy

trial rights.

(b) When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

(1) investigation, discovery and research relevant to the claim advanced;
(2) the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;

(3) full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and costs of having the client testify.

(c) Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

Guideline 6.1 The Plea Negotiation Process and the Duties of Counsel

(a) Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and in doing so should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

(b) Counsel should keep the client fully informed of any continued plea discussion and negotiations and convey to the accused any offers made by the prosecution for a negotiated settlement.

(c) Counsel should not accept any plea agreement without the client's express authorization.

(d) The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to prepare and preserve a defense.

Guideline 6.2 The Contents of the Negotiations

(a) During the plea negotiation process, counsel should be fully aware, and make sure the client is fully aware of:

(1) the maximum term of imprisonment and fine or restitution that may be ordered, and any mandatory punishment or sentencing guideline system;

(2) the possibility of forfeiture of assets;

(3) other consequences of conviction such as deportation, and civil disabilities;

(4) any possible and likely sentence enhancements or parole consequences;

(5) the possible and likely place and manner of confinement;

(6) the effect of South Carolina Department of Corrections policies and procedures, relevant statutes governing sentencing calculation on the potential sentence of the client, and the general range of sentences for similar offenses committed by defendants with similar backgrounds.

(b) In developing a negotiation strategy, counsel should be completely familiar with:

(1) concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:

(A) not to proceed to trial on the merits of the charges;

(B) to decline from asserting or litigating any particular pretrial motions;

(C) an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs.

(D) providing the prosecution with assistance in prosecuting or investigating the

present case or other alleged criminal activity.

(2) benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

(A) that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

(B) to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

(C) that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct;

(D) that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

(E) that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of any official presentence report, a specified position with respect to the sanction to be imposed on the client by the court.

(F) that the prosecution will not present, at the time of sentencing and/or in communications with the preparer of any official presentence report, certain information.

(G) that the defendant will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and the information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration.

(c) In conducting plea negotiations, counsel should be familiar with:

(1) the various types of pleas that may be agreed to, including a plea of guilty, a plea of nolo contendere and a plea in which the defendant is not required to personally acknowledge his or her guilt (Alford plea);

(2) the advantages and disadvantages of each available plea according to the circumstances of the case;

(3) whether the plea agreement is binding on the court, prison and parole authorities.

(d) In conducting plea negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority which may affect the content and likely results of negotiated plea bargains.

Guideline 6.3 The Decision to Enter a Plea of Guilty

(a) Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement, and the advantages and disadvantages and the potential consequences of the agreement.

(b) The decision to enter a plea of guilty rests solely with the client, and counsel should not attempt to unduly influence that decision.

Guideline 6.4 Entry of the Plea before the Court

(a) Prior to the entry of the plea, counsel should:

(1) make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;

(2) make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions and other consequences the accused will be exposed to by entering a plea;

(3) explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense.

(b) When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

(c) After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.

Guideline 7.1 General Trial Preparation

(a) The decision to proceed to trial with or without a jury rests solely with the client. Counsel should discuss the relevant strategic considerations of this decision with the client.

(b) Where appropriate, counsel should have the following materials available at the time of trial:

- (1) copies of all relevant documents filed in the case;
- (2) relevant documents prepared by investigators;
- (3) voir dire questions;
- (4) outline or draft of opening statement;
- (5) cross-examination plans for all possible prosecution witnesses;
- (6) direct examination plans for all prospective defense witnesses;
- (7) copies of defense subpoenas;
- (8) prior statements of all prosecution witnesses (e.g., transcripts, police reports);
- (9) prior statements of all defense witnesses;
- (10) reports from defense experts;
- (11) a list of all defense exhibits, and the witnesses through whom they will be introduced;
- (12) originals and copies of all documentary exhibits;
- (13) proposed jury instructions with supporting case citations;
- (14) copies of all relevant statutes and cases;
- (15) outline or draft of closing argument.

(c) Counsel should be fully informed as to the rules of evidence, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

(d) Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

(e) Throughout the trial process counsel should endeavor to establish a proper record for appellate review. As part of this effort, counsel should request, whenever necessary, that all trial proceedings be recorded.

(f) Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, counsel should be alert to the possible prejudicial effects of the client appearing before the jury in jail or other inappropriate clothing.

(g) Counsel should plan with the client the most convenient system for conferring throughout

the trial. Where necessary, counsel should seek a court order to have the client available for conferences.

(h) Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

Guideline 7.2 Voir Dire and Jury Selection

(a) Preparation

(1) Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.

(2) Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.

(3) Prior to jury selection, counsel should seek to obtain a prospective juror list.

(4) Where appropriate, counsel should develop voir dire questions in advance of trial. Counsel should tailor voir dire questions to the specific case. Among the purposes voir dire questions should be designed to serve are the following:

(A) to elicit information about the attitudes of individual jurors, which will inform about peremptory strikes and challenges for cause;

(B) to convey to the panel certain legal principles which are critical to the defense case;

(C) to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

(D) to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor.

(E) to establish a relationship with the jury, when the voir dire is conducted by an attorney.

(5) Counsel should be familiar with the law concerning mandatory and discretionary voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

(6) Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of rules concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.

(7) Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

(b) Examining the Prospective Jurors

(1) Counsel should consider seeking permission to personally voir dire the panel. If the court conducts voir dire, counsel should consider submitting proposed questions to be incorporated into the court's voir dire.

(2) Counsel should take all steps necessary to protect the voir dire record for appeal, including, where appropriate, making a copy of the proposed voir dire questions a court exhibit or reading proposed questions into the record.

(3) If the voir dire questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of the remaining jurors and that

the court, rather than counsel, conduct the voir dire as to those sensitive questions.

(4) In a group voir dire, counsel should avoid asking questions which may elicit responses which are likely to prejudice other prospective jurors.

(c) Challenges

(1) Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.

(2) Counsel should be familiar with legal authorities as to the proper exercise of preemptory challenges.

Guideline 7.3 Opening Statement

(a) Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.

(b) Counsel should be familiar with the law of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.

(c) Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case.

(d) Counsel's objective in making an opening statement may include the following:

(1) to provide an overview of the defense case;

(2) to identify the weaknesses of the prosecution's case;

(3) to emphasize the prosecution's burden of proof;

(4) to summarize the testimony of witnesses, and the role of each in relationship to the entire case;

(5) to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

(6) to clarify the jurors' responsibilities;

(7) to state the ultimate inferences which counsel wishes the jury to draw.

(e) Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.

(f) Whenever the prosecutor oversteps the bounds of a proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations weigh against any such objections or requests. Such tactical considerations may include, but are not limited to:

(1) the significance of the prosecutor's error;

(2) the possibility that an objection might enhance the significance of the information in the jury's mind;

(3) the contemporaneous objection requirement.

Guideline 7.4 Confronting the Prosecution's Case

(a) Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions.

(b) Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

(c) In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to

develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

(d) In preparing for cross-examination, counsel should include but not be limited to:

(1) consider the need to integrate cross-examination, the theory of the defense and closing argument;

(2) consider whether cross-examination of each individual witness is likely to generate helpful information;

(3) anticipate those witnesses the prosecution might call in its case-in-chief or in rebuttal;

(4) consider a cross-examination plan for each of the anticipated witnesses;

(5) be alert to inconsistencies in a witness' testimony;

(6) be alert to possible variations in witnesses' testimony;

(7) review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

(8) where appropriate, review relevant statutes and local police regulations for possible use in cross-examining police witnesses;

(9) be alert to issues relating to witness credibility, including bias and motive for testifying.

(e) Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

(f) Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

(g) Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for directed verdict on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

(h) Counsel should be familiar with the rules of error preservation and make the necessary objections to perfect the record for effective appellate review.

Guideline 7.5 Presenting the Defense Case

(a) Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.

(b) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify.

(c) Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

- (d) In preparing for presentation of a defense case, counsel should, where appropriate:
 - (1) develop a plan for direct examination of each potential defense witness;
 - (2) determine the implications that the order of witnesses may have on the defense case;
 - (3) consider the possible use of character witnesses;
 - (4) consider the need for expert witnesses.
- (e) In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.
- (f) Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.
- (g) Counsel should conduct redirect examination as appropriate.
- (h) At the close of the defense case, counsel must renew the motion for directed verdict on each charged count.

Guideline 7.6 Closing Argument

- (a) Counsel should be familiar with the substantive limits on both prosecution and defense summation.
- (b) Counsel should be familiar with the local rules and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.
- (c) In developing closing argument, counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:
 - (1) highlighting weaknesses in the prosecution's case;
 - (2) describing favorable inferences to be drawn from the evidence;
 - (3) incorporating into the argument:
 - (A) helpful testimony from direct and cross-examinations;
 - (B) verbatim instructions drawn from the jury charge;
 - (C) responses to anticipated prosecution arguments;
 - (4) the effects of the defense argument on the prosecutor's rebuttal argument.
- (d) Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:
 - (1) whether counsel believes that the case will result in a favorable verdict for the client;
 - (2) the need to preserve the objection;
 - (3) the possibility that an objection might enhance the significance of the information in the jury's mind.

Guideline 7.7 Jury Instructions

- (a) Counsel should be familiar with the rules and the individual judges's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.
- (b) Where appropriate, counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Where possible, counsel should provide caselaw in support of the

proposed instructions.

(c) Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

(d) If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including, where appropriate, making a copy of proposed instructions a court exhibit or reading proposed instructions into the record.

(e) During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary, request additional or curative instructions.

(f) If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury and to make appropriate motions and objections on the record.

Guideline 8.1 Obligations of Counsel in Sentencing

(a) Among counsel's obligations in the sentencing process are:

(1) where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, and financial implications;

(2) to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;

(3) to ensure all reasonably available mitigating and favorable information likely to benefit the client is presented to the court;

(4) to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;

(5) to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful or is otherwise improper is stricken from the text of any presentence investigation report before distribution of the report.

(6) to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted.

Guideline 8.2 Sentencing Options, Consequences and Procedures

(a) Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

(1) any sentencing guideline structure;

(2) deferred sentence and diversionary programs;

(3) expungement and sealing of records;

(4) probation or suspension of sentence and permissible conditions of probation;

(5) restitution;

(6) fines;

(7) court costs;

(8) imprisonment including any mandatory minimum requirements;

(9) confinement in mental institution;

(10) forfeiture.

(b) Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

(1) credit for pre-trial detention;
(2) parole eligibility and applicable parole release ranges;
(3) effect of good-time credits on the client's release date and how those credits are earned and calculated;

(4) place of confinement and level of security and classification;
(5) self-surrender to place of custody;
(6) any status consequence, including but not limited to sex offender status;
(7) available drug rehabilitation programs, psychiatric treatment, and health care;
(8) deportation;
(9) use of the conviction for sentence enhancement in future proceedings;
(10) loss of civil rights;
(11) impact of a fine or restitution and any resulting civil liability;
(12) restrictions on or loss of license.

(c) Counsel should be familiar with the sentencing procedures, including:

(1) the effect that plea negotiations may have upon the sentencing discretion of the court;
(2) the procedural operation of any relevant sentencing guideline system;

(3) the practices of the officials who prepare any presentence report and the defendant's rights in that process;
(4) the access to any presentence report by counsel and the defendant;
(5) the prosecution's practice in preparing a memorandum on punishment;
(6) the use of a sentencing memorandum by the defense;
(7) the opportunity to challenge information presented to the court for sentencing purposes;
(8) the availability of an evidentiary hearing to challenge information and the applicable rules of evidence and burdens of proof at such a hearing;
(9) the participation that victims and prosecution or defense witnesses may have in the sentencing proceedings.

Guideline 8.3 Preparation for Sentencing

(a) In preparing for sentencing, counsel should consider the need to:

(1) inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;
(2) maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;
(3) obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, and financial status, and obtain from the client sources through which the information provided can be corroborated;
(4) ensure the client has adequate time to examine any presentence report;
(5) inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible

consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses;

(6) prepare the client to be interviewed by the official preparing any presentence report;

(7) inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, treatment programs of probation or parole, or other judicial proceedings, such as forfeiture or restitution proceedings;

(8) inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;

(9) collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence.

Guideline 8.4 The Official Presentence Report (Space Reserved)

Guideline 8.5 The Prosecution's Sentencing Position

(a) Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of sentence be imposed.

(b) If a written sentencing memorandum is submitted by the prosecution, counsel should request to see the memorandum and verify that the information presented is accurate; if the memorandum contains erroneous or misleading information, counsel should take appropriate steps to correct the information unless there is a sound strategic reason for not doing so.

Guideline 8.6 The Defense Sentencing Presentation

(a) Counsel should prepare and present to the court a defense sentencing presentation where there is a strategic reason for doing so. Among the topics counsel may wish to include in the memorandum are:

(1) challenges to incorrect or incomplete information in the official presentence report and any prosecution sentencing memorandum;

(2) challenges to improperly drawn inferences and inappropriate characterizations in the official presentence report and any prosecution sentencing memorandum;

(3) information contrary to that before the court which is supported by affidavits, letters, and public records;

(4) information favorable to the defendant concerning such matters as the offense, mitigating factors and relative culpability, prior offenses, personal background, employment record and opportunities, education background, and family and financial status;

(5) information which would support a sentencing disposition other than incarceration, such as the potential for rehabilitation or the nonviolent nature of the crime;

(6) information concerning the availability of treatment programs, community treatment facilities, and community service work opportunities;

(7) presentation of a sentencing proposal;

(8) presentation of a written defense sentencing memorandum when appropriate.

Guideline 8.7 The Sentencing Process

(a) Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

(b) Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

(c) In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will be held, counsel should ascertain who has the burden of proving a fact unfavorable to the defendant, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

(d) Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

(e) Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning parole eligibility, psychiatric treatment or drug rehabilitation, and permission for the client to surrender directly to the place of confinement..

(f) Where appropriate, counsel should prepare the client to personally address the court.

Guideline 9.1 Motion for a New Trial

(a) Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

(b) When a judgment of guilty has been entered against the defendant after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

(1) The likelihood of success of the motion, given the nature of the error or errors that can be raised;

(2) the effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

Guideline 9.2 Right to Appeal

(a) Counsel should inform the defendant of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. In circumstances where the defendant wants to file an appeal, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.

(b) Counsel's advice to the defendant should include an explanation of the right to appeal the judgment of guilty and the sentence imposed by the court.

(c) Where the defendant takes an appeal, trial counsel should cooperate in providing information to appellate counsel concerning the proceedings in the trial court.

Guideline 9.3 Bail Pending Appeal

(a) Where a client indicates a desire to appeal the judgment and/or sentence of the court,

counsel should inform the client of any right that may exist to be released on bail pending the disposition of the appeal.

(b) Where an appeal is taken and the client requests bail pending appeal, trial counsel should cooperate with appellate counsel in providing information to pursue the request for bail.

Guideline 9.4 Self-Surrender

Where a custodial sentence has been imposed, counsel should consider requesting a stay of execution of the judgment to permit the client to report directly to the place of confinement.

Guideline 9.5 Sentence Reduction

Counsel should be aware of procedures to seek a reduction of sentence imposed by the trial court including any time limitations that apply to such a request.

Guideline 9.6 Expungement or Sealing of Record

Counsel should inform the client of any procedures available for requesting that the record of conviction be expunged or sealed.

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Appendix E. Performance Standards for Indigent Defense in Juvenile Cases

Appendix E includes performance standards for public defenders and assigned counsel in juvenile cases that were formally adopted by the S.C. Commission on Indigent Defense on June 7, 2013, effective July 1, 2013.

South Carolina Commission on Indigent Defense

Performance Standards for Indigent Defense in Juvenile Cases

Effective July 1, 2013

The following Performance Standards for Indigent Defense (Public Defenders and Assigned Counsel) were formally adopted by the SC Commission on Indigent Defense on June 7, 2013, effective July 1, 2013. Counsel in juvenile cases should also refer to the general Performance Standards for Public Defenders and Assigned Counsel as adopted by the Commission on June 7, 2013, effective July 1, 2013.

These performance standards are not intended to provide a new basis for a claim of ineffective assistance of counsel. They are benchmarks taken from existing national standards, and do not and cannot redefine the existing precedents that set forth the basis for determining when reversible error has occurred.

Section 1. Purpose of Standards

Juvenile delinquency proceedings in the South Carolina Family Court are fundamentally different than adult criminal cases. Judges are charged by the South Carolina Code of Laws with acting in the “best interests of the child,” this emphasis on the rehabilitation of the child contrasts with the more punitive model used by the adult criminal justice system. These standards aim to provide guidance to appointed counsel in juvenile matters with particular emphasis on the distinctive requirements of the South Carolina juvenile justice system.

Section 2. Attorney Role

Guideline 2.1 *Function of Defense Counsel.* The participation of counsel for juveniles subject to delinquency proceedings in Family Court is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of these proceedings.

Guideline 2.2 *Role of Counsel.* Counsel’s role is to insure that the interests and rights of the juvenile client are fully protected and to insure that the juvenile is afforded due process. Additionally, counsel in juvenile cases should be familiar with dispositional alternatives and services, should investigate the client’s social, educational, and psychological history, and should advocate a plan approved by the client generally proposing the least restrictive alternative.

Guideline 2.3 *Attorney Qualification and Training.*

a. In order to provide competent representation, counsel should know the South Carolina Code of Laws, the South Carolina Rules of Evidence, the South Carolina Rules of Family Court, and the South Carolina Rules of Criminal Procedure.

b. Counsel should be cognizant of the roles of the Department of Juvenile Justice (DJJ), the Department of Social Services (DSS), the Department of Disabilities

and Special Needs (DDSN), and the Department of Mental Health (DMH). Counsel should be aware of the various service delivery systems and placement processes for these agencies.

c. Counsel should be encouraged to attend continuing legal education seminars devoted specifically to the function and procedures of representing juveniles subject to Family Court proceedings.

d. Counsel should review and follow the Performance Standards for non-capital representation as they apply to qualification and training.

Guideline 2.4 Independence of Counsel. It is essential that the professional independence of counsel and the integrity of the attorney-client relationship be maintained at all times.

Section 3. Attorney Responsibilities

Guideline 3.1 Acting Diligently and Promptly. Counsel is bound by Rule 1.3 of the Rules of Professional Conduct to act with reasonable diligence and promptness in representing the client. Counsel should be prompt in all dealings with the court, including attendance, submissions of motions, briefs and proposed orders, and in dealing with clients and other interested parties.

Guideline 3.2 Acting Ethically. Counsel in a juvenile case must know and follow the standards of professional conduct set forth in the Rules of Professional Conduct and decisions of the South Carolina Supreme Court.

Section 4 Lawyer-Client Relationship

Guideline 4.1 Client Meetings. A lawyer should meet with the client as soon as practicable and as often as necessary to ascertain all relevant facts and matters related to the defense known to the client.

Guideline 4.2 Keeping Client Informed. The lawyer has a duty to keep the client informed on all developments in the case and of the lawyer's efforts and progress with respect to all phases of the representation. This duty may extend also to a parent or guardian whose interests are not adverse to the juvenile, subject to the confidentiality requirements of the South Carolina Rules of Professional Conduct.

Guideline 4. Confidentiality. Counsel should seek to establish a relationship of trust and confidence with the client. The lawyer should explain to the client that full disclosure to counsel of all facts known to the client is necessary for effective representation and, at the same time, explain that the lawyer's obligation of confidentiality makes the client's disclosures to counsel privileged.

Guideline 4.4 Client Duty and Responsibility. A lawyer has a duty to his juvenile client to protect confidentiality and to consult with his client just as in an adult case. This duty to determine how to best approach the case and

any plea negotiations must be undertaken with the client being fully informed. In juvenile cases this must be done with the client's best possible legal resolution of the case in mind and not the best interest of the parent or guardian, which may at times conflict with the client's interest.

Guideline 4.5 *Resolving Conflicts of Interest*. The lawyer's principal duty is always first and foremost the representation of the client's legitimate interest and not personal or professional advantage or convenience. Conflicts of Interest rules should always be followed. The potential for conflict of interest between a juvenile and his or her parents should be clearly recognized and acknowledged. All parties should be informed that counsel represents the juvenile and that in the event of a disagreement between a parent or guardian and the juvenile, the attorney is required to serve the interests of the juvenile.

Guideline 4.6 *Advice to Give Client*. A lawyer should advise the juvenile client with complete candor concerning all aspects of the case. This includes a frank estimate of the probable outcome.

Guideline 4.7 *Testimony by Juvenile*. It is the duty of the attorney to protect the juvenile defendant's privilege against self-incrimination. If the client elects not to testify then the attorney should insist on the recognition of this right.

Guideline 4.8 *Decision Making*. Certain decisions related to the conduct of the case are to be made by the lawyer and others by the client. The client is ordinarily responsible, after being fully advised and consulting with Counsel for determining:

- i. The plea to be entered at adjudication;
- ii. Whether to cooperate in diversion program;
- iii. Whether to be tried as a juvenile or an adult, where the client has the choice;
- iv. Whether to testify on his or her own behalf.

Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what motions should be made, and similar strategic and tactical decisions are the exclusive province of the lawyer after full consultation with the client.

Section 5 Attorneys' Initial Duties

Guideline 5.1 *Early Release*. Whenever the nature and circumstances of the case permit, counsel should explore the possibility of diversion from the formal juvenile court process.

If the client is detained, the lawyer should immediately consider all steps that may in good faith be taken to secure the child's release from custody. At detention hearings the lawyer should be present and prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the

allegations, the appropriateness of the place and criteria used for detention, and any non-compliance with procedures for referral to court or for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile. Counsel must be familiar with and able to use the DJJ guidelines for release in preparation for and presentation at detention hearings.

Guideline 5.2 *Visiting Detention Facility*. Whenever the juvenile is detained, the attorney should regularly and periodically visit the juvenile. The attorney should keep records of these visits.

Section 6 Pretrial Duties

Counsel should be held to the same standards set forth in the non-capital representation regarding Pretrial Duties.

Section 7 Transfer Hearings

Counsel is responsible for being familiar with the provisions of SC Code of Laws Section 63-19-1210 and its application to the client. Counsel should be ready to argue for or against transfer of jurisdiction to or from the Family Court based on the best interests of the client. Counsel must prepare for Transfer Hearings and consider the need for expert witnesses or other witnesses necessary to support the position of the client regarding the transfer of jurisdiction.

Section 8 Plea Negotiations

Guideline 8.1 The client should be made aware of any plea negotiations. Clients should be aware of any plea negotiations as soon as practical to inform them. Counsel is responsible for explaining and making sure the juvenile understands the concept of plea bargaining in general as well as the details of any specific plea offer made to the client. Counsel must advise the client on all possible consequences of an adjudication, including collateral consequences. Where it appears that the client's participation in a psychiatric, medical, social, or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and seek the client's consent to participation in such a program.

Section 9 Trial/Adjudication

Guideline 9.1 *Trial/Adjudication Standards*. The trial of a case in Juvenile Court requires much if not all the same skills and preparation as required in any non-capital trial handled by an attorney. Therefore, close attention should be paid to the

provisions for handling a trial set forth in these Performance Standards for non-capital cases by indigent defense attorneys.

Guideline 9.2 *Disposition without Trial*. Counsel must be aware of any alternative programs, along with inquiring if the minor would qualify for such diversion program, which may be available and allow the case to be disposed of without trial. This would include, but not be limited to, negotiated guilty pleas, alternative dispositions, deferrals and diversion programs. As noted above, this requires counsel to be informed about all these possible resolutions and to have fully investigated them in the context of the client's case.

The client must also be fully informed regarding the alternatives to trial and the advantages and possible disadvantages of a trial versus a negotiated plea or diversion program or other disposition.

If the client elects to enter into any plea or any of the other dispositions available to him or her it is the attorney's responsibility to be sure the client is properly informed and prepared for the Court hearing that will impose this resolution short of trial, including the Court procedures and format, his or her expected conduct and the possible outcomes/sentences.

Guideline 9.3 *Trial of the case*. Counsel must prepare for the trial just as described in the Performance Standards for non-capital cases except for matters relating to juries since a jury is not available in juvenile adjudications.

Section 10 Disposition/Sentencing

Guideline 10.1 *Counsel's Role at Disposition Hearings*. The active participation of counsel at disposition is often essential to the protection of clients' rights and to furtherance of their legitimate interest. Counsel must know and be ready to address the DJJ Guidelines for disposition as they relate to the client's case. Counsel must prepare for the disposition just as described in the sentencing provisions of the Performance Standards for non-capital cases while being aware of all the various options available for disposition in the juvenile's case. This can be the most valuable service to a client by an attorney.

Guideline 10.2 *Duty to Investigate*. Counsel should promptly investigate all sources of evidence including any reports or other information that will be brought to the court's attention, including all witnesses who are material to the disposition decision. Whether or not social and other dispositional reports are readily available, the lawyer has a duty independently to investigate the client's circumstances, including such factors as previous history, family relations, economic condition and any other information relevant to disposition. The lawyer should look to secure the assistance of expert personnel needed for purposes of evaluation, consultation, or testimony with respect to formation of a dispositional plan.

Guideline 10.3 *Client Counseling*. Prior to disposition counsel should explain to the client the nature of the disposition hearing, the issues involved, and the alternatives open to the court. When psychological or psychiatric evaluations are ordered by the State or used by defense counsel, Counsel should fully discuss and explain the process of these procedures to the client.

Guideline 10.4 *Hearing Duties*. It is Counsel's duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

Guideline 10.5 *Counseling After Disposition*. At disposition counsel should urge the Court to apply dispositional requirements that fit the client and avoid placing a counterproductive burden on the client and his or her parent or guardian. Counsel has a duty to obtain the Court's Final Order and review it carefully. Counsel should file objections to any errors or irregularities in the order and seek a hearing. If the Court refuses to correct its order after the hearing, Counsel should consider filing an appeal on behalf of the client seeking appropriate relief. When a dispositional decision has been reached, it is Counsel's duty to explain the nature, obligations and consequences of the disposition to the client and his or her parent or guardian and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

Guideline 10.6 *Continuing Duty to Client*. The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render assistance to the juvenile in securing appropriate legal services for the client in matters arising from the original proceeding. No matter the outcome, if Counsel feels that counseling services are necessary for the juvenile and/or the parent or guardian, Counsel should do everything in his/her power to assist them in receiving this assistance. Counsel should embrace a holistic approach to the client that not only addresses the immediate legal needs of the client but also seeks to place the client in the best position possible to succeed after the Court matters are resolved.

Section 11 Post-Dispositional Hearing Duties

Guideline 11.1 *Post-Trial Matters*. Counsel must be informed about and be able to handle contempt proceedings and probation violation matters. The Performance Standards for non-capital representation apply to Counsel in these matters as well.

End of Document

COMMITTEE CONTACT INFORMATION



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- Location - Blatt Building, Room 228

¹ Greenville Online, <https://www.greenvilleonline.com/story/news/crime/2015/03/09/citizens-group-court-backlog-making-streets-unsafe/24524199/> (Accessed April 19, 2018); August 9, 2018 email from Rodney Grizzle, SCCID to Charles Appleby, staff for House Legislative Oversight Committee.

² Visual Summary Figure 1 is compiled from information in the Commission on Indigent Defense study materials available online under "Citizens' Interest," under "House Legislative Oversight Committee Postings and Reports," and then under "Indigent Defense, Commission on" <http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/IndigentDefense.php> (accessed April 17, 2018).

³ Agency PER.

⁴ S.C. Code Ann. 17-3-310. Commission created; appointment of members; terms; powers and duties.

(A) There is created the Commission on Indigent Defense consisting of thirteen members.

(B) Nine members shall be appointed by the Governor as follows: (1) One member from each of the four judicial regions of the State appointed upon recommendation of the South Carolina Public Defender Association. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the manner of original appointment for the unexpired portion of the term. A person may not be appointed to the commission pursuant to the provisions of this item or, once appointed pursuant to the provisions of this item, may not continue to serve on the commission unless the person is a public defender. (2) A member of the South Carolina Bar whose practice is principally in family law, appointed upon recommendation by the South Carolina Bar membership for a term of two years and who may be reappointed. (3) Two members of the South Carolina Bar whose practice is principally in criminal defense law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for a term of two years and may be reappointed. (4) Two members of the South Carolina Bar whose practice is principally neither criminal defense nor family law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for two-year terms and who may be reappointed.

(C) The remaining four members must be appointed as follows: (1) two members appointed by the Chief Justice of the South Carolina Supreme Court, one of whom must be a retired circuit court judge and one of whom must be either a retired family court judge or a retired appellate court judge, each of whom shall serve for a term of four years and until a successor is appointed and qualifies; and (2) the Chairmen of the Senate and House Judiciary Committees, or their legislative designees, for the terms for which they are elected.

(D) The chairman must be elected by the commission from its membership and shall serve for a term of two years. A chairman may be re-elected.

(E) Members currently serving as of July 1, 2005, shall continue to serve until the expiration of their term and may be reappointed as provided in subsection (B)(1).

(F) The commission may adopt an appropriate seal and promulgate regulations consistent with the provisions of this article to govern its operations and procedures and shall supervise the operations of the Office of Indigent Defense including all the divisions of the office.

(G) The commission: (1) may establish divisions within the office to administer the services and programs as it considers necessary to fulfill the purposes of this article; (2) shall develop rules, policies, procedures, regulations, and standards as it considers necessary to carry out the provisions of the article and comply with state law or regulations and the rules of the Supreme Court, including the nature and scope of services to be provided, the clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation; (3) shall cooperate and consult with state agencies, professional associations, and other groups concerning the causes of criminal conduct, the rehabilitation and correction of persons charged with and convicted of crimes, the administration of criminal justice, and the

improvement and expansion of defender services; (4) shall assist the public defenders throughout the State in their efforts to provide adequate legal defense to the indigent. This assistance includes, but is not limited to: (a) the preparation and distribution of a basic defense manual and other educational materials; (b) the preparation and distribution of model forms and documents employed in indigent defense; (c) the promotion of and assistance in the training of indigent defense attorneys; (d) the provision of legal research assistance to public defenders; and (e) the provision of other assistance to public defenders as may be authorized by law; (5) shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the State; and (6) shall have the authority to negotiate and enter into contracts, as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable. This authority may be delegated by the commission to a circuit public defender, but is at all times subject to standards established by the commission. (7) The commission shall establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels, and shall establish the rules and procedures under which the selection panels shall operate.

⁵ S.C. Code Ann. 17-3-340. Duties of commission.

(A) All members of the commission shall at all times act in the best interest of indigent defendants who are receiving legal representation pursuant to the provisions of this chapter.

(B) All members of the commission are entitled to vote on all matters before the commission unless otherwise provided by law or by rules adopted by the commission concerning conflicts of interest.

(C) Each member of the commission shall serve until a successor has been appointed. Removal of commission members is for cause and must be in accordance with policies and procedures adopted by the commission.

(D) Unless otherwise provided in this article, a quorum is a majority of the members of the commission who are currently serving in office, and decisions of the commission are determined by majority vote of the members present, except that a majority of the entire commission must approve the appointment or removal of a circuit public defender or the executive director for cause.

(E) The commission shall meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties and shall keep and maintain minutes of all commission meetings.

(F) The commission shall elect such officers, other than the chairperson, from the members of the commission as it deems necessary and shall adopt rules for the transaction of its business as it desires. Elected officers shall serve for a term of one year and may be removed without cause by a vote of two-thirds of the members of the entire commission and for cause by a majority vote of the entire commission. The chairperson shall retain a vote on all matters except those in which the chairperson has a conflict of interest.

(G) The members of the commission shall receive no compensation for their services but will be reimbursed for their actual expenses incurred in the performance of their duties as members of the commission. Expenses incurred by the commission must be paid from the general operating budget of the commission.

(H) The commission shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.

(I) The commission shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary or advisable to fulfill the purposes and provisions of this article in the delivery of indigent services. This includes, but is not limited to, standards for: (1) maintaining and operating circuit public defender offices, including requirements regarding qualifications, training, and size of the legal and support staff of the offices and access to data and records, including business records, in each circuit public defender office; (2) prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person; (3) public defender and appointed counsel caseloads; (4) the qualifications, employment, and compensation of public defenders and other circuit public

defender office personnel, based on job description, education, training, and experience; (5) the performance of public defenders and appointed counsel representing indigent persons; (6) procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate courts, whether by contract or court appointment; (7) providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons; (8) determining indigence and for assessing and collecting the costs of legal representation and related services; (9) compensation of attorneys appointed to represent indigent persons pursuant to this chapter; (10) removing a circuit public defender for cause; (11) a uniform definition of a "case" for purposes of determining caseload statistics; and (12) accepting contractual indigent defense representation.

⁶ S.C. Code Ann. 17-3-330. Duties of Office of Indigent Defense.

(A) The Office of Indigent Defense shall: (1) serve as the entity which distributes all funds appropriated by the General Assembly for the defense of indigents, including funds allocated to public defender offices pursuant to the formula, funds for the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes; (2) perform those functions provided pursuant to Section 17-3-360; (3) serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this State; (4) implement other duties the commission may direct; and (5) report annually to the General Assembly on the indigent defense system.

(B) On or about June thirtieth of each year, if the Office of Indigent Defense determines, after taking into consideration all outstanding obligations against the fund for payment of attorney fees and expenses in non-capital cases, that unexpended funds remain, these funds shall be rolled over into the fund for payment of attorney's fees and expenses in capital cases; provided, however, this shall occur only in the event the funds in the capital fund have been exhausted at that time. This fund shall at no time exceed three million dollars.

(C) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense.

⁷ S.C. Code Ann. 17-3-360. Division of Appellate Defense created; administration and staffing; duties and responsibilities.

(A) There is created within the Office of Indigent Defense, the Division of Appellate Defense. All of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with the commission and Office of Appellate Defense formerly provided in Chapter 4, Title 17 are transferred to and incorporated in and must be administered as part of the Office of Indigent Defense.

(B) The division must be administered by a chief attorney. The staff of the division shall consist of additional attorneys and administrative, investigative, secretarial, and clerical employees necessary to discharge the duties of the division. No person may be hired to serve as an attorney who is not licensed to practice law in this State. Attorneys employed by the division shall devote full time to their duties and may not engage in the private practice of law.

(C) The division shall carry out the following duties and responsibilities: (1) It shall represent a person who the office determines, subject to court review, falls within the guidelines promulgated pursuant to Section 17-3-310(G)(2) who files Notice of Intention to Appeal or desires to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility. A person desiring representation by the division shall request a determination of his indigency status in writing from the Supreme Court, the court of appeals, the circuit or family court, or the division. A court receiving a request for indigent appellate representation shall forward the request to the office who, within ten days of the receipt of the request for representation, shall notify the person requesting representation and the court in which the appeal will be effected of its decision. (2) Upon a finding that a person requesting representation qualifies as an indigent and after being appointed as counsel for this person by the court in which the appeal will be effected, the division shall represent this person in his appeal of a conviction in a trial court, or decision of a proceeding in civil commitment or other involuntary placement in a state, county, or municipal facility, provided nothing in this article requires the division to pursue an appeal unless the chief attorney of the division is first satisfied that there is arguable merit to the appeal. (3) It shall represent

indigents, other than at trial or commitment proceedings when appointed by the court. (4) It shall represent indigents in appeals of convictions in trial courts of this State, or decisions of civil commitment proceedings or other involuntary placement only in courts of this State.

⁸ S.C. Code Ann. 17-3-310.

⁹ S.C. Code Ann. 17-3-340.

¹⁰ S.C. Code Ann. 17-3-340.

¹¹ S.C. Code Ann. 17-3-340.

¹² S.C. Code Ann. 17-3-340.

¹³ S.C. Code Ann. 17-3-310.

¹⁴ S.C. Code Ann. 17-3-340.

¹⁵ S.C. Code Ann. 17-3-320.

¹⁶ S.C. Code Ann. 17-3-320.

¹⁷ S.C. Code Ann. 17-3-320.

¹⁸ S.C. Code Ann. 17-3-320. Office of Indigent Defense; executive director; appointment; duties.

(A) There is created the Office of Indigent Defense under the jurisdiction of the commission. The office must be administered by an executive director appointed by the commission. The executive director may hire other administrative, clerical, and legal staff and is authorized to contract with outside consultants on behalf of the office as he considers necessary to provide the services as required pursuant to the provisions of this article.

(B) The executive director shall: (1) administer and coordinate the operations of the office and all divisions within the office and supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission; (2) maintain proper records of all financial transactions related to the operation of the office; (3) coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services; (4) prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require; (5) coordinate in the development and implementation of rules, policies, procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards; (6) maintain proper records of all financial transactions related to the operation of the commission; (7) apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests; (8) provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter; (9) attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director; (10) ensure that the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources; and (11) perform other duties as the commission assigns.

¹⁹ S.C. Code Ann. 17-3-320.

²⁰ S.C. Code Ann. 17-3-320.

²¹ S.C. Code Ann. 17-3-320.

²² S.C. Code Ann. 17-3-330. including funds allocated to public defender offices pursuant to the formula, funds for the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes

²³ S.C. Code Ann. 17-3-320.

²⁴ S.C. Code Ann. 17-3-330.

²⁵ S.C. Code Ann. 17-3-340.

²⁶ S.C. Code Ann. 17-3-310.

²⁷ S.C. Code Ann. 17-3-310.

²⁸ S.C. Code Ann. 17-3-340.

²⁹ S.C. Code Ann. 17-3-310.

³⁰ S.C. Code Ann. 17-3-310.

³¹ S.C. Code Ann. 17-3-320.

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- ³² S.C. Code Ann. 17-3-320.
- ³³ S.C. Code Ann. 17-3-340.
- ³⁴ S.C. Code Ann. 17-3-340.
- ³⁵ S.C. Code Ann. 17-3-340.
- ³⁶ S.C. Code Ann. 17-3-320.
- ³⁷ S.C. Code Ann. 17-3-340.
- ³⁸ S.C. Code Ann. 17-3-340.
- ³⁹ S.C. Code Ann. 17-3-330. See also, S.C. Code Ann. 17-3-360.
- ⁴⁰ S.C. Code Ann. 17-3-330(B)-(C)
- ⁴¹ S.C. Code Ann. 17-3-310.
- ⁴² S.C. Code Ann. 17-3-310.
- ⁴³ S.C. Code Ann. 17-3-340.
- ⁴⁴ S.C. Code Ann. 17-3-320.
- ⁴⁵ S.C. Code Ann. 17-3-330.
- ⁴⁶ Phone conversation between Mr. Hugh Ryan, SCCID, Mr. Rodney Grizzle, SCCID, and Mr. Charles Appleby, House Legislative Oversight Committee staff, on April 20, 2018.
- ⁴⁷ Phone conversation between Mr. Hugh Ryan, SCCID, Mr. Rodney Grizzle, SCCID, and Mr. Charles Appleby, House Legislative Oversight Committee staff, on April 20, 2018. See also, Proviso 117.110, General Appropriations Bill for Fiscal Year 2016-17 and Proviso 117.109, General Appropriations Bill for Fiscal Year 2017-18 (The Prosecution Coordination Commission and the Commission on Indigent Defense shall provide detailed expenditure reports and associated revenue streams for each individual circuit, revenue streams shall include, but not be limited to, state funds, local funds, Federal funds, and also nongovernmental sources of funds, by no later than September first, on the prior fiscal year, to the appropriate commission. The commissions shall then provide the Chairman of the House Ways and Means Committee and Chairman of the Senate Finance Committee with a combined report by September fifteenth of the current fiscal year.)
- ⁴⁸ S.C. Code Ann. 17-3-330.
- ⁴⁹ Department of Administration, Executive Budget Office, “2016-17 Accountability Report Technical Assistance Guide,” under Agency Accountability Reports <http://www.admin.sc.gov/files/FY%202016-17%20Accountability%20Report%20Technical%20Assistance.pdf> (accessed July 21, 2017). See also, Agency PER.
- ⁵⁰ Agency’s PER.
- ⁵¹ May 1, 2018 Subcommittee Meeting
- ⁵² Email from Mr. Rodney Grizzle, S.C. Commission on Indigent Defense, to Mr. Charles Appleby, House Legislative Oversight Committee, on October 3, 2018.
- ⁵³ May 1, 2018 Subcommittee Meeting
- ⁵⁴ Letter from SCCID to Oversight Subcommittee with attachments (Sept. 7, 2018), Agency’s Response to Oversight Subcommittee’s August 17, 2018 Letter, Question #2, [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20\(Sept.%207,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20(Sept.%207,%202018).pdf) (accessed September 29, 2018)
- ⁵⁵ Email from Mr. Rodney Grizzle, S.C. Commission on Indigent Defense, to Mr. Charles Appleby, House Legislative Oversight Committee, on October 3, 2018.
- ⁵⁶ Letter from SCCID to Oversight Subcommittee with attachments (Sept. 7, 2018), Agency’s Response to Oversight Subcommittee’s August 17, 2018 Letter, Question #2, [https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20\(Sept.%207,%202018\).pdf](https://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyWebpages/IndigentDefense/Letter%20from%20SCCID%20to%20Oversight%20Subcommittee%20with%20attachments%20(Sept.%207,%202018).pdf) (accessed September 29, 2018)
- ⁵⁷ Email from Mr. Rodney Grizzle, S.C. Commission on Indigent Defense, to Mr. Charles Appleby, House Legislative Oversight Committee, on October 3, 2018.
- ⁵⁸ Email from Mr. Rodney Grizzle, S.C. Commission on Indigent Defense, to Mr. Charles Appleby, House Legislative Oversight Committee, on October 3, 2018.
- ⁵⁹ October 9, 2018 Subcommittee meeting.
- ⁶⁰ Email from Mr. Rodney Grizzle, S.C. Commission on Indigent Defense, to Mr. Charles Appleby, House Legislative Oversight Committee, on October 3, 2018.

⁶¹ Email from Mr. Rodney Grizzle, S.C. Commission on Indigent Defense, to Mr. Charles Appleby, House Legislative Oversight Committee, on October 3, 2018.

⁶² October 9, 2018 Subcommittee meeting.

⁶³ October 9, 2018 Subcommittee meeting.

⁶⁴ Agency PER, Law recommendations section, recommendation #5.

⁶⁵ Agency PER, Law recommendations section, recommendation #5.

⁶⁶ October 9, 2018 Subcommittee meeting.

⁶⁷ Agency PER, Law recommendations section, recommendation #6.

⁶⁸ October 9, 2018 Subcommittee meeting.

⁶⁹ Mr. Rodney Grizzle, SCCID email to Mr. Charles Appleby, House Legislative Oversight Committee, in April 2018.