

§ 7A-498.8. Appellate Defender.

(a) The appellate defender shall be appointed by the Commission on Indigent Defense Services for a term of four years. A vacancy in the office of appellate defender shall be filled by appointment of the Commission on Indigent Defense Services for the unexpired term. The appellate defender may be suspended or removed from office for cause by two-thirds vote of all the members of the Commission on Indigent Defense Services. The Commission shall provide the appellate defender with timely written notice of the alleged causes and an opportunity for hearing before the Commission prior to taking any final action to remove or suspend the appellate defender, and the appellate defender shall be given written notice of the Commission's decision. The appellate defender may obtain judicial review of suspension or removal by the Commission by filing a petition within 30 days of receiving notice of the decision with the Superior Court of Wake County. Review of the Commission's decision shall be heard on the record and not as a de novo review or trial de novo. The Commission shall adopt rules implementing this section.

(b) The appellate defender shall perform such duties as may be directed by the Office of Indigent Defense Services, including:

- (1) Representing indigent persons subsequent to conviction in trial courts. The Office of Indigent Defense Services may, following consultation with the appellate defender and consistent with the resources available to the appellate defender to ensure quality criminal defense services by the appellate defender's office, assign appeals, or authorize the appellate defender to assign appeals, to a local public defender's office or to private assigned counsel.
- (2) Maintaining a clearinghouse of materials and a repository of briefs prepared by the appellate defender to be made available to private counsel representing indigents in criminal cases.
- (3) Providing continuing legal education training to assistant appellate defenders and to private counsel representing indigents in criminal cases, including capital cases, as resources are available.
- (4) Providing consulting services to attorneys representing defendants in capital cases.
- (5) Recruiting qualified members of the private bar who are willing to provide representation in State and federal death penalty postconviction proceedings.
- (6) In the appellate defender's discretion, serving as counsel of record for indigent defendants in capital cases in State court.
- (6a) In the appellate defender's discretion, serving as counsel of record for indigent defendants in the United States Supreme Court pursuant to a petition for writ of certiorari of the decision on direct appeal by a court of the North Carolina Appellate Division.
- (7) Undertaking other direct representation and consultation in capital cases pending in federal court only to the extent that such work is fully federally funded.

(c) The appellate defender shall appoint assistants and staff, not to exceed the number authorized by the Office of Indigent Defense Services. The assistants and staff shall serve at the pleasure of the appellate defender.

(d) Funds to operate the office of appellate defender, including office space, office equipment, supplies, postage, telephone, library, staff salaries, training, and travel, shall be provided by the Office of Indigent Defense Services from funds authorized by law. Salaries

shall be set by the Office of Indigent Defense Services. (2000-144, s. 1; 2007-323, s. 14.19(b); 2008-187, s. 3.)