

MALCOLM RAY HUNTER, JR.
EXECUTIVE DIRECTOR
MALCOLM.R.HUNTER@NCCOURTS.ORG

TELEPHONE:
(919) 560-3380
FACSIMILE:
(919) 560-3332

**OFFICE OF
INDIGENT DEFENSE SERVICES
STATE OF NORTH CAROLINA**

www.ncids.org
123 WEST MAIN STREET
SUITE 400
DURHAM, N.C. 27701

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Memorandum

To: Bar Presidents, Appointed Attorneys, Superior Court Judges, District Court Judges,
Clerks of Court
From: Malcolm Ray Hunter, Jr., IDS Director
Re: Model Indigent Appointment Plan for Non-Public Defender Districts
Date: April 2008

I am writing to inform you that the Commission on Indigent Defense Services (“IDS Commission”) recently approved “Model Regulations for Appointment of Counsel in Cases under the Indigent Defense Services Act” for non-public defender districts.

As you may be aware, prior to the General Assembly’s establishment of the Office of Indigent Defense Services (“IDS”) on July 1, 2001, the North Carolina State Bar required each district bar to adopt a plan for indigent representation. To aid districts in doing so, the State Bar adopted a model appointment plan, last amended in 1996. When the General Assembly created IDS, it placed responsibility for oversight of these plans with IDS. The IDS Commission felt that it would be helpful to provide each judicial district with a modernized model plan that conforms with the IDS Rules. In addition to updating and modernizing the existing district plans, the IDS Commission hopes that, if your local indigent appointment committee has been dormant or has disbanded, this effort will provide your committee with an opportunity to rejuvenate or provide local bar presidents with an opportunity to appoint a new committee.

The IDS Commission and Office are committed to the ideals of quality and accountability but are open to the use of a variety of methods, whether through private assigned counsel, public defender offices, or contracts, for particular jurisdictions to provide representation to indigent persons in ways that best meet these ideals. In developing the model regulations, the Commission sought to balance the goals of consistency, equity, quality, and accountability with the need for local jurisdictions to have enough flexibility to accommodate local circumstances and needs.

As you review the model regulations, please note that, while they prescribe indigent appointment committees for each county within the judicial district, IDS recognizes that this is not always feasible because of the particularities of multi-county districts, and we are willing to talk with local actors about whether to have district or county committees. Also, please note that the model regulations suggest that each county’s indigent committee should consist of no less than three members of the local bar appointed by the bar president. IDS believes that the

independence of defense counsel is very important and that the majority of all local committees should be comprised of defense attorneys. However, if a locality is interested in having a larger committee with appointees who represent other system actors (such as judges or clerks), we are certainly open to that concept and would be happy to discuss it.

We also want to emphasize that the model regulations are not meant to be comprehensive as to the methods of providing representation. We are aware that many counties have existing arrangements other than per-case appointments for some case types, such as attorney-for-the-day or -session systems or appointments of multiple cases to each attorney per rotation. Nothing in this model plan is intended to discourage districts from experimenting with alternative appointment systems, and, in fact, IDS encourages local actors to consider such innovations if they would benefit your appointment system. If you are interested in learning more about alternative systems in other counties, please do not hesitate to call us.

As a means of strengthening the skills of younger attorneys, IDS also encourages local appointment committees to provide inexperienced attorneys who are approved for the various indigent lists with a packet of resources that would assist them in representing their clients. Such materials might include information about the resources available through IDS, the North Carolina Academy of Trial Lawyers, and the School of Government, including training provided by each institution. We would be happy to assist districts in compiling these materials. Moreover, IDS and the North Carolina Bar Association (“NCBA”) recently produced an online CLE that provides guidance to appointed attorneys about appropriate billing practices and completing the various fee application forms, which will soon be available for free on the IDS website and for CLE credit on the NCBA website. We encourage local indigent committees to direct applicants to the lists to that video for instruction.

Over the next year, IDS staff will be sending the model appointment plan to each local bar president, along with a request that he or she work with us to implement some version of the model plan. Rather than contacting all jurisdictions at once, IDS plans to contact local actors in stages from west to east so that our staff can work more effectively with a few jurisdictions at a time. In the meantime, please feel free to contact Danielle Carman or Susan Brooks in the IDS Office if you have questions about the model plan or IDS’ schedule for working with local districts. As you know, IDS Rule 1.5(a)(3) provides that any revisions to a county or district appointment plan must be approved by the IDS Commission and certified by the IDS Director before they become effective. Thank you in advance for your time and attention.