

FREQUENTLY ASKED QUESTIONS ABOUT THE NEW IDS UNIFORM INDIGENT APPOINTMENT PLAN

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1. Why are there new uniform indigent appointment regulations?

Prior to 2001, the NC State Bar was tasked with ensuring that jurisdictions had indigent appointment plans, and the State Bar developed a model plan that all jurisdictions adopted. When IDS was created, the responsibility for appointment plans shifted to them, and IDS decided at the time that it would be easier to grandfather in the old plans based on the State Bar model and update them as requested. In 2008, IDS developed a model appointment plan, and while some jurisdictions adopted some form of that plan, many have operated under the old plans dating back to the 1980s, which, among other deficiencies, are not current as to appointment responsibility for capital and appellate lists and do not contain provisions for non-adult criminal cases for which counsel should be appointed.

In 2015, NC Supreme Court Chief Justice Mark Martin convened a commission to identify and to make recommendations for improvements in the court system, the NC Commission on the Adjudication of Law and Justice (“NCCALJ”), which had a subcommittee addressing indigent defense. One of the recommendations of that subcommittee was that in order to ensure that counsel has the necessary ability and skills to handle indigent cases, IDS should develop uniform training and experience requirements for each case type and should review and modify the standards as needed. Drawing on this recommendation, in 2018 the NC General Assembly amended N.C.G.S. 7A-498.3(b1) to require that IDS develop a model appointment plan with minimum qualification standards for appointed private counsel by July 1, 2019, for judicial districts to adopt as is or to request modification within 18 months. IDS is further required to review the model plan and qualification standards every five years and to notify judicial districts of any

changes, with 18 months from the notice for jurisdictions to adopt or request modification to the plan as amended.

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2. What are the major changes between the new uniform plan and the old model plan?

The changes of significance are:

- List 1: Misdemeanor Cases and Misdemeanor Probation Violations continues to allow new attorneys to be on the list, but it requires that anyone with less than one year of being licensed to practice to participate in a mentorship program for a year.
- List 1 further requires attorneys who are trying their first jury trials in superior court to have served previously as second chairs or to have second chairs on the trials. Likewise, List 2: Felonies F through I and Felony Probation Violations now requires that attorneys who do not have the required jury trial experience to have served previously as second chair or to have second chairs for their first jury trials. List 3: Felonies A to E requires that attorneys trying their first cases involving charges covered by this list to have served as second chair on a trial involving such a charge or to have second chairs on the trials. IDS is willing to compensate attorneys for second-chairing and, recognizing that many jurisdictions do not have second-chair programs and that they might have difficulty in instituting such programs, to work with local indigent appointment committees to create second-chair programs.
- List 2 requires attorneys to have been licensed to practice law for two years, rather than one year as in the old model plan.
- List 4: Juvenile Cases has been divided into List 4A: Juvenile Class A1-3 Misdemeanors, Class H-I Felonies, Probation Violations, and Motions for Contempt, and List 4B: Juvenile Class A-G Felonies, with the latter encompassing heightened qualification requirements.
- List 5: Special Proceedings has now been divided into three lists covering each type of proceeding – List 5A: Guardianship and Disabled Adults, List 5B: Judicial Waiver, and List 5C: Civil Commitment – with corresponding observation and knowledge requirements.
- Several lists now have ongoing CLE requirements, such as List 3, which requires attorneys to complete nine hours of CLE relevant to representation of high-level felonies every three years in order to remain on the list.
- IDS will be posting on its website at <http://www.ncids.org/IndigentApptPlans/ApptPlanLinks.htm?c=Indigent%20Appointment%20Plans> an orientation packet containing information to assist attorneys in providing representation to clients for each case type, and applicants will have to certify that they have read the sections relevant to the lists for which they are applying.

- In light of concerns that have been expressed to IDS about the need for attorneys to have office space within the jurisdiction, IDS has boiled down the requirements for availability to clients and courts to their core components, such as having a confidential space to meet with clients and effective means of communication for clients to reach their attorneys. While having an office in the jurisdiction will generally meet these requirements, it may not, and issues arising from not having a local office can be addressed in other ways.
- IDS will be creating a Public Defense Portal and will be posting it on the IDS website. IDS wants attorneys on the lists to sign up for it. Benefits of doing so include better communication from IDS, the ability to compete the list application online, and to keep up with meeting ongoing CLE requirements.
- IDS has reconciled the difference between the model plan and the IDS Rules regarding initial jail visits, now matching the uniform plan to the rules by requiring that attorneys visit incarcerated clients within three business days of notice of appointment, rather than 48 hours as in the old model plan.

For those who already serve on current appointment lists, including the current Special Proceedings list (Model Plan List 5), the new uniform plan does not entail many significant changes; however, important changes include that counsel will need to review the orientation packet sections relevant to the lists on which they serve, will have to apply to be on List 4A, and may need to meet ongoing CLE requirements depending on the list.

To afford a more comprehensive accounting of the changes from the old model plan to the new uniform plan, IDS has posted a redlined version of the 2008 model plan showing all the changes incorporated in the uniform plan as well as a final clean copy of the uniform plan on its website at <http://www.ncids.org/IndigentApptPlans/ApptPlanLinks.htm?c=Indigent%20Appointment%20Plans>.

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3. What process did IDS go through to decide on these changes?

After discussing potential areas of change to the model plan with IDS staff and the IDS Commission, IDS conducted a survey of attorneys about the requirements of the model plan and potential changes, which generated 300 responses. IDS reviewed the survey results with a group of experienced attorneys that included public defenders, private assigned counsel, statewide defenders, members of local indigent appointment committees, and IDS Commission members. Staff drafted the changes recommended by the group, which were discussed, refined, and approved by a committee of the IDS Commission, and the final version of the uniform plan was then ultimately reviewed and approved by the entire Commission.

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4. Will the uniform plan automatically go into effect in my jurisdiction on July 1, 2019?

No. Jurisdictions have until Jan 2, 2021 to adopt it as is or to request modifications.

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5. If my jurisdiction wants to accept the uniform plan as written, what do we need to do?

The bar president should complete the online certification at <http://www.ncids.org/IndigentApptPlans/ApptPlanLinks.htm?c=Indigent%20Appointment%20Plans>.

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6. If my jurisdiction wants to modify the regulations to better meet local needs, what do we need to do?

The bar president or someone else who is involved with the local indigent appointment program should request any desired modifications online at <http://www.ncids.org/IndigentApptPlans/ApptPlanLinks.htm?c=Indigent%20Appointment%20Plans>.

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7. What kinds of modifications will IDS consider?

Generally, IDS will consider and approve any modification under which the process for appointing counsel will work better for a local jurisdiction, as long as the modification does not undermine the goal of ensuring qualified counsel for clients. Some specific areas that IDS would consider include:

- Making the regulations cover a county or counties, rather than a judicial district;
- Having designated committee seats held or appointed by certain officials;
- Listing additional availability requirements, other than the requirement to have an office in the jurisdiction (e.g., having a box in the courthouse);
- Including certain charges or matters that would be normally be included in one list in another, related list (i.e., charges that would normally be covered by List 2 be covered by List 3);
- Making changes to qualification requirements, as long as the changes do not eliminate or diminish the minimum requirements;
- Creating additional lists (e.g., MAR, DWI); and
- Including other special provisions that have previously been approved by IDS for your or any other jurisdiction, as long as the changes do not eliminate or diminish the minimum requirements (e.g., who administers the list).

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8. How can my jurisdiction create a new appointment list, such as a list for non-capital MAR representation?

As noted above, new appointment lists are one of the modifications that jurisdictions can request, and IDS will work with the jurisdiction to develop these lists, including what cases will be covered and the qualification standards to be on the lists, provided there are sufficient cases and attorneys to support such lists.

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9. What happens if my jurisdiction doesn't take any action on the uniform plan?

The enabling legislation provides that if a jurisdiction has not adopted some version of the uniform plan by January 2, 2021, the uniform plan will become effective for the jurisdiction as of that date. However, IDS will allow jurisdictions to request modifications after that point.

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10. How do I apply for a list under the uniform plan?

The application process is subject to the discretion of each indigent appointment committee, but to assist the committees IDS has developed a model application and will be posting it at <http://www.ncids.org/IndigentApptPlans/ApptPlanLinks.htm?c=Indigent%20Appointment%20Plans>.

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11. If I am currently on a list under my jurisdiction's old plan, do I have to apply to be on the new list covering that area of law, and do I have to meet the new qualification standards to be on that list?

Attorneys on most existing lists, including Special Proceedings (Model Plan List 5) corresponding to those in the uniform plan do not need to reapply, but they will need to read the sections that are relevant to those lists in the orientation packet to be posted at <http://www.ncids.org/IndigentApptPlans/ApptPlanLinks.htm?c=Indigent%20Appointment%20Plans> and will have to meet any ongoing requirements in the uniform plan. However, attorneys who are currently on a juvenile list covering all case types will need to apply to be considered for List 4B, covering serious juvenile felonies.

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12. Why is IDS creating the Public Defense Portal and making sign-up a condition for being on a list?

In seeking input for the uniform plan and other projects, IDS has become acutely aware of the need for a better means of distributing messages to attorneys who are appointed to represent indigent clients. The Portal is meant to be a way to increase IDS's ability to communicate with counsel, including sending targeted information to counsel on certain lists. The Portal will also enable IDS to monitor participation in training and to see patterns of unavailable training in order to consider directing additional resources and assistance to foster training opportunities. Moreover, the Portal will assist attorneys and local indigent appointment committees in keeping up with CLE requirements for lists.

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13. How will second-chairing work?

Attorneys will be able to sit with experienced counsel on trials and, if they have not done so, to have experienced attorneys sit with them on their first trials of certain case types. The hope and expectation is that the less-experienced attorney will participate meaningfully in strategizing and conducting the trial so that s/he can best learn from the experience. IDS commits to paying for this second-chair work and authorizes judges to appoint or to make allowance for second counsel for that purpose. Recognizing that most jurisdictions do not currently offer the ability for attorneys to second chair, IDS is willing to work with local indigent appointment committees to develop such programs.

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14. How will mentorship work?

Some jurisdictions have already established formal or informal programs in which experienced attorneys are paired with new attorneys to guide them, assist them with case strategies, answer their questions, and ensure that they gain sufficient knowledge of the law and the local court system to effectively represent clients. For jurisdictions that have not instituted such programs, IDS will work with local indigent appointment committees to develop them.

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15. Whom do I contact with further questions or concerns?

For more information, contact Susan Brooks at Susan.E.Brooks@nccourts.org or (919) 354-7200.

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