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

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MEMORANDUM

To: Indigent Defense Attorneys
Re: Attorney Fee and Expense Applications (Capital Cases and Appeals)
From: Office of Indigent Defense Services
Date: Updated January 13, 2010

I. The Attorney Fee and Expense Application:

An attorney fee application that is directed to the IDS Office should be comprised of three parts: 1) one copy of the appropriate AOC-CR application form; 2) one copy of itemized time sheets; and 3) any required receipts.

A. The Application Forms:

There are 2 forms for use by private attorneys requesting compensation from the IDS Office for attorney fees and expenses in indigent cases.¹ Both forms are available at www.ncids.org:

- AOC-CR-425 (Capital Case Fee Application, Rev. 1/09): An applicant must complete this form for payment in homicide cases at the trial level (other than second-degree murder cases and cases in which the defendant was under 18 years of age at the time of the offense), as well as in capital appeals and post-conviction cases, and submit it to the IDS Office.
- AOC-CR-426 (Non-Capital Criminal or Non-Criminal Appeals Fee Application, Rev. 1/09): An applicant must complete this form for payment in non-capital criminal or non-criminal appeals, and submit it to the IDS Office.

B. The Itemized Time Sheets:

- An applicant must attach to his or her fee application itemized time sheets that provide sufficient detail regarding counsel's services in the case to demonstrate that the claim for compensation is reasonable.
- Time sheets are not expected to include exhaustive detail, and attorneys should redact confidential information and work product. However, time sheets must

¹ An applicant seeking compensation for a non-capital criminal case at the trial level should complete AOC-CR-225 (Rev. 4/06), and submit it to the presiding district or superior court judge. An applicant seeking compensation for a civil case at the trial level should complete AOC-G-200 (Rev. 4/06), and submit it to the presiding district or superior court judge. An applicant seeking compensation for a juvenile delinquency case at the trial level should complete AOC-J-411 (New 4/06), and submit it to the presiding district court judge.

include meaningful details about the quantity and quality of services rendered. At a minimum, time sheets must reflect attorney time broken down according to date, description of activity, and amount of time in tenths of an hour.

- Time sheets that are insufficiently detailed, that include generic descriptions such as “review file,” “review discovery,” or “trial preparation” without additional details, or that report time spent on multiple activities in large aggregated blocks will be returned to counsel unpaid with a request for clarification.
- In all potentially capital cases that proceed to a capital or non-capital jury trial, if an attorney submits one fee application form that covers services rendered before and during trial, the attorney must attach two separate itemized time sheets—one time sheet that covers all services rendered before the date that jury selection began and a separate time sheet that covers all services rendered after the date that jury selection began.
- Time sheets must be computer generated. Handwritten time sheets will not be accepted.

C. The Attached Receipts:

- See section IV. below.

D. Grounds for Return: Fee Applications in Potentially Capital Cases at the Trial Level, Capital Cases on Direct Appeal, and Capital Post-Conviction Cases (AOC-CR-425), and Non-Capital Criminal or Non-Criminal Appeals (AOC-CR-426):

- All fee applications must be typed or printed legibly. Fee applications that are illegible will be returned to the attorney unpaid.
- Fee applications that do not include the following information will be returned to the attorney for completion or clarification:
 - ✓ Court
 - ✓ County
 - ✓ File number(s)
 - ✓ Name and address of indigent client
 - ✓ Social security number of indigent client or indication that s/he has no social security number (if you cannot determine the client’s social security number after reasonable efforts, write “unknown”)
 - ✓ Nature of Proceeding and Case Status/Type of Disposition (AOC-CR-425), or Most Serious Conviction or Proceeding that was Appealed (AOC-CR-426)
 - ✓ Disposition Date and Name of Presiding Judge (if final fee on AOC-CR-425), or Name of Presiding Judge at the Trial Level, Date of Opinion, and Result on Appeal (if final fee on AOC-CR-426)
 - ✓ Beginning and ending dates of attached time sheets
 - ✓ Prior total fees and expenses allowed by IDS in this case (if applicable)
 - ✓ Total time claimed, as well as total time broken down into time in court, time waiting, and time out of court
 - ✓ Expense information and receipts (if applicable)
 - ✓ The attorney’s name, address, telephone number, and taxpayer identification number
 - ✓ The attorney’s signature

II. Standard Hourly Attorney Fees:

A. Capital Cases:

For all work performed on or after August 1, 2006, the standard hourly attorney fee for provisional counsel in capital cases is \$85 per hour. For all work performed on or after August 1, 2006, the standard hourly attorney fee for in-court and out-of-court time in capital cases at the trial, appellate, and post-conviction levels is \$95 per hour.

- For fee purposes, a trial-level case is considered “capital” if it began as a first-degree murder charge or charge of murder where the degree is undesignated, except cases in which the defendant was under 18 years of age at the time of the offense. *See* Rules of the Commission on Indigent Defense Services, Part 2, Rule 2A.1(a). For example, a case in which the defendant is initially charged with first-degree murder will be compensated at the \$95 per hour “capital” rate throughout the trial stage, even if the case was declared non-capital at a Rule 24 hearing and the defendant subsequently entered a plea to second-degree murder.
- An appellate case is considered “capital” only if it is the direct appeal of an actual sentence of death.
- A post-conviction case is considered “capital” only if the defendant is under an actual sentence of death.

B. Non-Capital Criminal and Non-Criminal Appeals:

- For fee applications that are signed by the IDS Director before February 1, 2008, the standard hourly attorney fee for any non-capital or non-criminal direct appeal is \$65 per hour. For fee applications that are signed by the IDS Director on or after February 1, 2008, the standard hourly attorney fee for any non-capital or non-criminal direct appeal will be \$75 per hour.
- IDS will compensate an attorney for time spent preparing a petition for discretionary review (“PDR”) or notice of appeal based on a substantial constitutional question (“NOA”). For work performed before October 1, 2006, the maximum amount of time that will be compensated for preparing and filing a PDR or NOA is 5 hours. For work performed on or after October 1, 2006, the maximum amount of time that will be compensated for preparing and filing a PDR or NOA was increased to 10 hours.

C. Miscellaneous:

- Absent exceptional circumstances that warrant personal delivery, IDS will not pay an attorney for time associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a document. If exceptional circumstances exist, counsel must attach to the fee application a brief explanation of those circumstances.
- IDS will not compensate an attorney for time spent preparing a fee application.

III. Attorney Interim and Final Fees:

A. Interim Fees:

Assuming the following conditions have been met, an attorney may submit an application for interim fees, which the IDS Director may grant in his discretion.

1. Capital Cases:

Absent exceptional circumstances, the IDS Office will only process interim attorney fee requests in capital cases when one of the following two conditions has been met: 1) the interim fee application covers a time period of 3 or more months; or 2) the interim fee application involves a payment amount of \$3,000.00 or more.

2. Non-Capital Appeals:

Absent exceptional circumstances, the IDS Office will only process interim attorney fee requests in non-capital appeals when one of the following two conditions has been met: 1) the transcript is 1,500 or more pages and the settled record on appeal has been filed; or 2) the appellant's brief has been filed.

B. Final Fees:

1. Capital Cases:

When submitting an application for final fees and expenses, please provide a statement of all experts used in the case, and the amount those experts have been authorized and paid. (See Section V. below). The IDS Office may request a conference with the attorney prior to final payment of attorney fees and expenses. If such a conference is held, counsel will be compensated for his or her time spent in that review.

2. Non-Capital Appeals:

The final fee application in a non-capital appeal should be submitted after the Court of Appeals issues a decision, or the Supreme Court denies discretionary review or dismisses the notice of appeal, whichever occurs later. (If the Supreme Court allows review, the attorney may submit an interim fee application at that time and again after the new brief is filed in the Supreme Court.)

IV. Scope of Representation in Potentially Capital Cases at the Trial Level— Related Civil Suits Against a Capital Defendant:

A. General Rule:

A defendant charged with a potentially capital offense is not entitled to appointed counsel to represent him or her in a related civil suit, such as a wrongful death claim. Thus, other than the exception noted in IV.B., below, IDS will not compensate appointed counsel for work or expenses associated with a civil suit.

B. Exception:

Because a related civil suit may directly impact the pending criminal litigation, IDS will compensate appointed counsel in the criminal case for a small amount of work in a related civil case, not to exceed 10 hours (\$950) without prior authorization. Such work may include consulting with the defendant and his or her civil attorney about the civil suit, discussing with the defendant and his or her civil attorney the impact of civil discovery or

settlement on the criminal case, and filing and arguing a motion to stay the civil proceedings. Such work may not include drafting discovery documents or preparing for depositions in the civil case. In an extraordinary case and with advance written approval from the IDS Director, IDS may compensate appointed counsel for a reasonable amount of additional time, including time spent participating as criminal counsel in a mediation. These services will not be reimbursed on interim bills, and can only be claimed as part of the attorney's final fee application in a case.

V. Reimbursable Expenses:

A. Prior Approval Not Required:

The following necessary expenses are reimbursable without prior approval from the IDS Office. If exceptional circumstances warrant the expenditure of higher amounts, the applicant should seek pre-approval from the IDS Office before incurring the expense.

1. In-State Travel:²

- a. Mileage on Privately-Owned Vehicles:** Mileage is reimbursed at the current state rate for out-of-county travel only. In-county travel is not reimbursable. For fee applications received at the IDS Office on or after February 16, 2009, the mileage rate is \$0.35 per mile.
- b. Rental Vehicles:** If you choose to rent a vehicle for case-related travel, you will be reimbursed for the lesser of the following: 1) the cost of the rental vehicle plus gasoline; or 2) the mileage reimbursement you would have received if you had driven your personal vehicle. You must attach a receipt to be reimbursed for rental car expenses.
- c. Meals:** Meals will only be reimbursed if there is an overnight stay; meals will then be reimbursed according to the current state authorized per diem, with one per diem per overnight stay. Receipts are not required. For all fee applications received at the IDS Office on or after July 16, 2007, the in-state per diem is \$34. For all fee applications received at the IDS Office on or after August 1, 2009, the in-state per diem will be \$35.15.
- d. Lodging:** The actual cost of over-night lodging will be reimbursed, not to exceed the current state authorized rate – \$63.75 for all fee applications received on or after July 16, 2007 and \$65.90 for all fee applications received on or after August 1, 2009. In addition, actual taxes incurred are reimbursable. A valid hotel receipt is required, and credit card receipts will not be accepted.
- e. Other:** Any other travel-related expenses (e.g., parking) must be supported by receipts.

2. Long-Distance Telephone Calls:

The actual cost of case-related long-distance telephone calls will be reimbursed only if supporting phone bills are submitted.

² Reimbursement rates for travel-related expenses are based on the current travel allowances for State employees. See G.S. 138-6.

3. Printing Transcripts:

Once the Supreme Court of North Carolina approves revised Rules of Appellate Procedure that direct court reporters to deliver transcripts to appellate counsel in electronic format, IDS will reimburse counsel for printing one original of the transcript at a rate not to exceed \$0.10 per single-sided page and a rate not to exceed \$0.16 per double-sided page. The applicant must indicate the number of transcript pages printed, whether they were single or double-sided, and the price charged per page. The actual cost of out-of-house printing is reimbursable with a receipt or documentation on the number of pages printed and the amount paid per page, at a rate not to exceed \$0.10 per single-sided page and \$0.16 per double-sided page.

4. Photo-Copying:

a. Black and White Copies:

In-house copying costs are reimbursable at a rate not to exceed \$0.10 per page for single-sided copies and a rate not to exceed \$0.16 per page for double-sided copies. The applicant must indicate the number of copies prepared, whether they were single or double-sided, and the price charged per page. The actual cost of out-of-house copies are reimbursable with a receipt or documentation on the number of copies prepared and the amount paid per page, at a rate not to exceed \$0.10 per page for single-sided copies and \$0.16 for double-sided copies.

(i) Reimbursable Client Copies in all Cases on Appeal:

In capital and non-capital cases, IDS will reimburse the appellate attorney for the cost of providing to the client a copy of the settled record on appeal, appellate briefs, and opinion.

(ii) Other Copies in Capital Cases on Appeal:

In capital cases, IDS will reimburse the appellate attorney for the cost of providing to the client a copy of the transcript of trial proceedings during the pendency of the appeal. Absent exceptional circumstances and prior approval, IDS will not reimburse the appellate attorney for the cost of providing to the client a copy of the court file.

(iii) Other Copies in Non-Capital Cases on Appeal:

In non-capital cases, absent exceptional circumstances and prior approval, IDS will not reimburse the appellate attorney for the cost of providing to the client a copy of the court file or transcript during the pendency of the appeal. Once the appeal is complete, the original file and transcript belong to the client. (In the rare case where the attorney of record and Appellate Defender agree that an *Anders* brief is appropriate, the appellate attorney will be reimbursed for providing the client with an advance copy of the transcript in compliance with *Anders*.)

b. Color Copies:

In-house color copying costs are reimbursable at a rate not to exceed \$1.00 per page. The applicant must indicate the number of copies prepared and the price charged per page. The actual cost of out-of-house color copies are reimbursable with a receipt or documentation on the number of copies

prepared and the amount paid per page, at a rate not to exceed \$1.00 per page.

5. Scanning:

In-house scanning costs are reimbursable at a rate not to exceed \$0.10 per page. The applicant must indicate the number of pages scanned and the price charged per page. The actual cost of out-of-house scanning is reimbursable with a receipt or documentation on the number of pages scanned and the amount paid per page, at a rate not to exceed \$0.10 per page.

6. Facsimiles:

- The cost of sending facsimiles from a personal or office machine is reimbursable at a rate not to exceed \$0.05 per page.
- The actual cost of sending facsimiles from an outside machine, such as a hotel facsimile machine, is reimbursable with a receipt.

7. CDs/DVDs/Audiotapes:

- The cost of blank CDs, DVDs, or audiotapes is reimbursable at a rate not to exceed \$1.00 each.

8. Personal or Expedited Delivery:

- Absent exceptional circumstances that warrant personal delivery, IDS will not pay an attorney's time or expenses associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a document. If exceptional circumstances exist, counsel must attach to the fee application a brief explanation of those circumstances.
- Absent exceptional circumstances, IDS also will not reimburse an attorney for expenses associated with expedited or overnight delivery of documents or filings. If exceptional circumstances exist, counsel must attach to the fee application a brief explanation of those circumstances.

9. Computerized Legal Research:

- The actual case-related costs of computerized legal research (e.g., Lexis-Nexis and Westlaw) will be reimbursed only if receipts are provided.
- Courtsearch, NC 123, DMV and DOC searches, etc.: The actual costs of any such computerized searches will be reimbursed only if receipts are provided. If actual costs are not incurred, an attorney will be compensated for his or her time according to the hourly rate, but will not be compensated any amount per search.

10. Continuing Legal Education:

IDS will not pay attorneys for time or expenses associated with attending most continuing legal education programs. However, some time and expenses associated with the following "hands-on" training programs are compensable:

a. Capital College (co-sponsored by NCAJ & CDPL):

IDS will reimburse an attorney who attends the Capital College for: 1) actual driving time for one round trip to and from the college; 2) 10 hours for time

spent at the college working on his or her case; and 3) mileage for one round trip to and from the college at the current state authorized rate.

- b. Changing the Picture of Your Post-Conviction Case (or equivalent program sponsored by CDPL):
IDS will reimburse an attorney who attends this post-conviction program for: 1) actual driving time for one round trip to and from the college; 2) 6 hours for time spent at the program working on his or her case; and 3) mileage for one round trip to and from the program at the current state authorized rate.
- c. North Carolina Appellate Advocacy Training (sponsored by IDS):
IDS will reimburse an attorney who attends this appellate program for: 1) actual driving time for one round trip to and from the college; 2) 6 hours for time spent at the program working on his or her case; and 3) mileage for one round trip to and from the program at the current state authorized rate.
- d. The Racial Justice Act: Proving Bias and Saving Your Client's Life (co-sponsored by NCAJ & CDPL):
IDS will reimburse an attorney who attends this October 2009 program for 5 hours of time spent at the program, to be billed to one of their pending potentially capital cases at the trial level or capital post-conviction cases.

11. Paralegal or Legal Assistant Time:

Effective April 1, 2004, IDS will compensate an attorney as a reimbursable expense for the time of an in-house paralegal or legal assistant at a rate of \$15 per hour, not to exceed a total of 35 hours (or \$525.00) per case per attorney without prior authorization. This service will not be reimbursed on interim bills, and can only be claimed as part of the attorney's final fee application in a case. The final fee application must be accompanied by an itemized billing record setting forth the paralegal's or legal assistant's time. Paralegal or legal assistant services will only be reimbursed if they are directly related to a case file, and will not be reimbursed if they involve routine administrative office tasks.

12. Student Time:

Effective April 1, 2004, in capital cases at the trial or post-conviction level, IDS will compensate an attorney as a reimbursable expense for amounts actually expended on assistance from students (at a college level or higher) at a rate up to \$10 per hour, not to exceed a total of 50 hours (or \$500.00) per case without prior authorization. This service will not be reimbursed on interim bills, and can only be claimed as part of the attorney's final fee application in a case. The final fee application must be accompanied by an itemized billing record setting forth the student's time, as well as a statement of the hourly rate actually paid to the student. Student services will only be reimbursed if they are directly related to a case file, and will not be reimbursed if they involve routine administrative office tasks. Work performed by students will not be reimbursed in appellate cases.

13. Other Expenses:

a. Miscellaneous:

For all “other expenses” that cumulatively exceed \$25.00 (e.g., postage, film (purchased by the roll or in bulk), etc.), an applicant must submit receipts or supporting documentation.

b. Overhead:

Normal overhead expenses, such as case notebooks, paper, push pins, etc., will not be reimbursed.

B. Prior Approval Required:

1. Out-Of-State Travel:

Necessary expenses associated with out-of-state travel are reimbursable only with prior approval from the IDS Office.

a. Travel Costs: Reasonable and pre-approved travel costs will be reimbursed with receipts.

b. Meals: Meals will only be reimbursed if there is an overnight stay; meals will then be reimbursed according to the current state authorized per diem, with one per diem per overnight stay. Receipts are not required. For all fee applications received at the IDS Office on or after July 16, 2007, the out-of-state per diem is \$36.25. For all fee applications received at the IDS Office on or after August 1, 2009, the out-of-state per diem will be \$37.50.

c. Lodging: The actual costs of over-night lodging will be reimbursed, not to exceed the current state authorized rate – \$75.50 for all fee applications received at the IDS Office on or after July 16, 2007 and \$78.05 for all fee applications received at the IDS Office on or after August 1, 2009. In addition, actual taxes incurred are reimbursable. A valid hotel receipt is required, and credit card receipts will not be accepted.

2. Transcript Production:

a. IDS can not order a court reporter to produce a transcript or to expedite production of a transcript; only a Judge can enter such an Order. *See, e.g.,* G.S. 15A-1444(e); N.C. R. App. P. 7. However, IDS can authorize funding for transcript production in capital cases and appeals.

b. If IDS authorizes funding for normal transcript production (on form IDS-015), the court reporter will be paid at the approved indigent rates published in the Court Reporter Handbook – \$1.75 per page for an original or \$.60 per page for a copy, effective July 1, 1999. To get paid, the court reporter should complete AOC-A-42, and forward that form and the IDS authorization to AOC Administrative Services Division.

c. If an attorney needs an expedited transcript in an exceptional case, or to pay a court reporter an appearance fee in a hearing that would not normally be transcribed, the attorney has 2 options:

i) Obtain a Court Order directing the court reporter to produce the transcript in a specified period of time, or to appear at the hearing; or

ii) Apply to the IDS Office for prior authorization to compensate the court reporter at a higher expedited rate, or to allow funding for an

appearance fee. Funding at a higher rate per page or for an appearance fee must be specifically authorized by the IDS Office before the expense is incurred.

VI. Expert Services:

A. Prior Authorization Required:

- Prior authorization is required for the use of any expert services in any case under the direct oversight of the IDS Office—i.e., first-degree murder or undesignated degree of murder cases at the trial level, all capital and non-capital appeals, and capital post-conviction proceedings. Attorneys and experts are expected to monitor any expert spending and, absent exceptional circumstances, the IDS Office will not compensate experts for amounts in excess of the prior authorization.
- To obtain prior authorization in a potentially capital case at the trial level, the attorney of record should complete form IDS-028 and mail, fax, or email that form to the Office of the Capital Defender. If funds are being requested after a case has been finally disposed at the trial level, the Office of the Capital Defender no longer has authority to approve funds and the attorney of record must submit the request to the IDS Director, along with an explanation for why funds were not sought and obtained in a timely fashion.
- To obtain prior authorization in a capital post-conviction case, the attorney of record should complete form IDS-029 and mail, fax, or email the form to the IDS Office.
- To obtain prior authorization in a direct appeal, the attorney of record should mail, fax, or email a written request for funds to the IDS Office.
- If an expert plans to bill for the services of any other person pursuant to the expert's authorization, the attorney must seek and obtain specific prior approval for the services of that other person.
- The IDS Office will honor any Court authorizations for expert funding that were obtained before July 1, 2001, or those that result from any appeal to a Judge from a denial by the IDS Office. *See* Rules of the Commission on Indigent Defense Services, Rule 2D.4 (2001).

B. Policy Concerning Trial Attendance by Investigators and Mitigation Specialists:

Effective April 1, 2004, IDS will compensate investigators and mitigation specialists for attending portions of a trial when their assistance is necessary, as long as that service can be provided within the amount pre-authorized for the investigator or mitigation specialist. However, IDS will not compensate investigators or mitigation specialists for attendance at an entire trial unless there are extraordinary circumstances justifying that attendance and the attorney of record obtains prior approval.

C. The Expert Fee and Expense Application:

- All expert bills in all cases under the direct oversight of the IDS Office should be submitted directly to the IDS Office, and not to the Administrative Office of the Courts or the State Controller's Office.
- Applications will be accepted directly from the expert, or from the attorney of record on behalf of the expert.

- The application must include: 1) form IDS-003; 2) a copy of the funding authorization from the IDS Office or a Court; 3) the expert's itemized billing records; and 4) any required receipts.
- After receipt and processing, IDS will issue payment directly to the expert. *Attorneys should never pay an expert with their own funds and then seek reimbursement.*

D. Lay Witness Fees:

- The IDS Office cannot compensate lay witnesses for their time or expenses because G.S. 7A-314(a)-(c) & (e) (1999 & 2000) were not modified by the IDS Act. Those provisions set statutory allowances for the time, mileage, lodging, and meals for lay witnesses, and leave statutory authority for lay witness reimbursement with the Clerk or Judge.
- If you are seeking compensation for a lay witness in any category of case, please complete AOC-CR-235 ("Witness Attendance Certificate") and submit it to the Clerk or Judge as required by G.S. 7A-314.

E. Foreign Language Interpreters and Translators:

- G.S. 7A-314(f) (1999 & 2000) also was not modified by the IDS Act. It provides that "[i]n a criminal case when a person who does not speak or understand the English language is an indigent defendant[or] a witness for an indigent defendant, . . . and the court appoints a language interpreter to assist that defendant or witness in the case, the reasonable fee for the interpreter's services, as set by the court, are payable from funds appropriated to the Administrative Office of the Courts."
- If an attorney needs the services of a foreign language interpreter or translator in any category of case, he or she should obtain prior authorization from the Court. For details about obtaining an out-of-court interpreter or translator, see the IDS policy on out-of-court foreign language interpreters and translators, *available at www.ncids.org* under the "Rules & Procedures" link.

F. Interpreters for Deaf Persons:

- G.S. 8B-2, 8B-6, and 8B-8 (1999) govern the appointment and compensation of interpreters for deaf persons. Authority for appointment and compensation still lies with the Courts.
- An attorney requiring the services of a sign language interpreter should obtain prior authorization from the Court using AOC-G-116 ("Motion, Appointment And Order Authorizing Payment Of Deaf Interpreter Or Other Accommodation"). The interpreter can then seek payment from the Clerk using that same form.