

PD Offices, Submitting Fee Applications to the Court, and Recoupment

What is Recoupment?

“Recoupment” means that the defendant, respondent, or some responsible person is ordered at the termination of the court proceedings to repay the State for the representation that was provided. All money that defendants pay back via recoupment goes directly to the indigent defense fund to pay for legal services for other indigent defendants and respondents. Expected recoupment revenues are a part of IDS’ annual budget. The Legislature calculates how much money IDS should recoup each year and deducts that amount from our appropriation.

There are two primary methods of recoupment in North Carolina:

1. *Repayment Through Probation.*

The court can make repayment of attorney’s fees a condition of supervised or unsupervised probation pursuant to G.S. 15A-1343(e) (or recommend repayment as a condition of work release or post-release supervision if the person is incarcerated pursuant to G.S. 15A-1340.36, 148-33.2, or 148-57.1). Under this system, the indigent defendant is ordered to repay attorney fees through probation by making payments directly to the Clerk of Court.

2. *Repayment Through Set-Off Debt.*

The court can enter a civil judgment against the person for the amount of fees found to be due, and that amount is then recovered through the interception of state income tax refunds and lottery winnings. *See* G.S. 7A-450.1 through -450.4, 7A-455; *see also* G.S. 105A-1 through 105A-16 (Setoff Debt Collection Act).

The civil judgment order is located on the back of the applicable fee application form. In criminal cases, the judge automatically enters a judgment by signing the back of the fee application form unless he or she “opts out” of a judgment by checking the applicable box. In other cases where the entry of judgment is discretionary, the judgment section on the back of the fee application forms requires the judge to make an affirmative finding before a valid judgment is entered.

What Public Defenders Need to Do

When a non-capital criminal or non-criminal case is disposed at the trial level and is recoupment-eligible, the attorney *must* submit a fee application to the presiding judge. This is required for both private appointed counsel and public defenders. *See* G.S. 7A-455.

The reason IDS created the carbonless copy fee application form was to provide PD offices with an easy way to generate two copies of each fee application.

1. The white fee application copy

This is the complete fee application form. It has both a front and back. The white copy is to be turned in to the judge when the case is recoupment-eligible (see below for recoupment-eligible cases).

2. The yellow copy

This is a partial copy of the fee application form. It only has the front of the fee application form and the reverse side is blank. The yellow copy is turned in to IDS *in all cases*, including withdrawals, regardless of whether the case is eligible for recoupment. The PDs asked IDS to audit all offices’ fee applications

and disposition reporting to ensure consistency among offices, and the IDS staff use the yellow copy to perform those audits. Many offices complete the disposition report by counting the number of yellow fee application forms turned into their administrative staff by attorneys. If your office does not give IDS a copy of your fee application form, your office does not receive credit for disposing of that case (or partial credit for withdrawals).

In addition, when PD offices submit “Attorney-for-the-Day” fee applications, they must include with the fee application a list of all cases handled in that session (file number, defendant name, and disposition date). Many offices opt to attach the docket to the fee application with the cases they handled highlighted or clearly marked. IDS needs this list of cases to report accurate case counts to the AOC and Legislature. Without this information, IDS would be under-reporting the number of cases PDs handle each year, which in turn would make it more difficult to get offices the resources you need to handle all your cases.

Remember, by law, the judge is supposed to order recoupment or consider ordering recoupment in certain cases, and the fee application form triggers the civil judgment aspect of recoupment. Once you submit the fee application form to the judge, your job is done. You do NOT need to get a copy of the fee application with the judge’s signature.

Recoupment-Eligible Cases

Not all types of cases are recoupment-eligible, and not all dispositions lead to recoupment.

1. *Criminal Cases.* (Fee Application Forms AOC-CR-225 and AOC-CR-425)

In all adult criminal cases in which the defendant is “convicted,” the statute provides that the court “shall” enter a judgment for attorney fees. G.S. 7A-455. While recoupment appears mandatory in these circumstances, the statute is subject to constitutional standards. Thus, in criminal cases, recoupment can be ordered if the defendant is convicted, pleads guilty or *nolo contendere*, or a probation violation is found. On the other hand, recoupment can not be ordered if the defendant is acquitted or the case is dismissed. Recoupment also can not be ordered before the conclusion of the case, such as when an attorney files for interim fees or submits a fee application at the time of withdrawing from a case.

It is the position of AOC and IDS legal staff that recoupment should not be ordered in cases that end in a prayer for judgment continued (“PJC”) or deferred prosecution. However, ultimately, this is a call for the presiding judge to make based on his or her understanding of the law.

2. *Cases Involving Minors.* (Fee Application Forms AOC-J-411 and AOC-G-200)

Recoupment from a parent or guardian is authorized in some proceedings involving minors. Various statutes authorize recoupment from a parent or guardian of the costs of an attorney or a guardian ad litem provided to a minor in the following types of proceedings:

1. Juvenile delinquency cases when the juvenile is adjudicated delinquent (G.S. 7A-450.1 through -450.4, 7B-2000);
2. Undisciplined contempt cases when the juvenile has been held in contempt (G.S. 7A-450.1 through -450.4, 7B-2000);

3. Criminal convictions of a defendant under the age of 18 (G.S. 7A-450.1 through -450.4);
4. Abuse, neglect, or dependency cases when the juvenile has been adjudicated abused, neglected, or dependent (G.S. 7A-450.1 through -450.4, 7B-603);
5. Termination of parental rights cases when the parent's rights have been terminated (G.S. 7A-450.1 through -450.4, 7B-603); and
6. Voluntary admission cases when the minor is committed (G.S. 7A-450.1 through -450.4, 122C-224.1).

All of the applicable statutes direct the court to follow the procedures for recoupment in G.S. 7A-450.1 through -450.4, which give the judge discretionary authority to order the parent or guardian to repay attorney or guardian ad litem fees after considering the financial situation of the parent or guardian, the relationship of responsibility involved, and whether the minor is emancipated or not dependent.

3. *Non-Criminal Cases.* (Fee Application Form G-200)

Recoupment is also authorized by G.S. 7B-603 in cases when counsel is provided to an adult in abuse, neglect, or dependency, or termination of parental rights proceedings. The parent or guardian may be held responsible for the costs of their own counsel or guardian ad litem only if the child is found to have been abused, neglected, or dependent, or the parent's rights are terminated. G.S. 7B-603 directs the court to follow the procedures for recoupment in G.S. 7A-450.1 through -450.4, which give the judge discretionary authority to order the parent or guardian to repay attorney or guardian ad litem fees after considering the financial situation of the parent or guardian, the relationship of responsibility involved, and whether the minor is emancipated or not dependent.

No other non-criminal cases are currently covered by our statutes. The main types of proceedings that generate counsel fees are contempt and involuntary commitment. The courts may currently be ordering recoupment when a person is convicted of criminal contempt, such as when a person willfully fails to pay child support in violation of a court order, but are not authorized by statute to do so when a person is found in civil contempt. The courts also are not currently authorized to order recoupment in involuntary commitment proceedings involving adults.