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MEMORANDUM

TO: Superior Court Judges, District Court Judges
Clerks of Superior Court, Public Defenders, District Attorneys

FROM: Office of Indigent Defense Services

DATE: Updated November 30, 2020

RE: UPDATED PROCEDURES TO IMPLEMENT ATTORNEY APPOINTMENT FEE REQUIRED
BY G.S. 7A-455.1

This memo sets forth revised procedures for implementing the attorney appointment fee pursuant to G.S. 7A-455.1 as revised by Session Law 2020-83, which revised G.S. 7A-455.1 to increase the amount of the attorney appointment fee effective December 1, 2020. For convenient reference, the revised statute is reprinted at the end of this memorandum.

- For all fees assessed or collected on or after December 1, 2020 (*i.e.*, for convictions on or after December 1, 2020), the amount of the fee is \$75.
- For all fees assessed or collected between October 1, 2010 and November 30, 2020 (*i.e.*, for convictions on or after October 1, 2010 and on or before November 30, 2020), the amount of the fee is \$60.
- For all fees assessed or collected before October 1, 2010 (*i.e.*, for convictions on or before September 30, 2010), the amount of the fee is \$50.

Pursuant to G.S. 7A-455.1(g), the Office of Indigent Defense Services hereby adopts the following amended rules and procedures to govern implementation of the statute as revised by Session Law 2020-83.

PROCEDURES TO IMPLEMENT THE ATTORNEY APPOINTMENT FEE

A. General Principles:

1. The attorney appointment fee may not be imposed prior to disposition, and may only be imposed upon defendants after they have been convicted or pled guilty or nolo contendere to one or more charges. (Throughout this memo, references to “conviction” or “convicted” include pleas of guilty or nolo contendere. Such references do not include findings of responsibility for an infraction.)
2. The attorney appointment fee may not be imposed upon defendants who are acquitted or whose cases are dismissed.
3. For all fees assessed or collected on or after December 1, 2020, the amount of the fee is \$75. Thus, if a defendant is convicted on or after December 1, 2020, the amount of the fee is \$75.

4. For all fees assessed or collected before December 1, 2020, the amount of the attorney appointment fee is \$60. Thus, if a defendant is convicted on or before November 30, 2020, the amount of the fee is \$60, even if the fee is not actually collected until after December 1, 2020.
5. For all fees assessed or collected before October 1, 2010, the amount of the attorney appointment fee is \$50. Thus, if a defendant is convicted on or before September 30, 2010, the amount of the fee is \$50, even if the fee is not actually collected until after October 1, 2010.
6. The attorney appointment fee shall be assessed only in criminal cases—*i.e.*, in cases with a CR or CRS case caption. The fee shall *not* be assessed when an attorney was appointed to represent an indigent person in a child support contempt proceeding.
7. Clerks shall not collect up-front payments of the attorney appointment fee. If an indigent criminal defendant was represented by appointed counsel, the fee shall be assessed at the time of final disposition at the trial level only if the defendant is convicted of one or more charges. The fee shall *not* be assessed when a case is resolved by a prayer for judgment continued, deferred prosecution, diversion, or a finding of responsibility for an infraction.
8. The appointment fee shall be assessed only once for each attorney appointment, regardless of the number of cases in which an attorney was appointed. If the charges are subsequently reassigned to another appointed attorney, an additional appointment fee shall not be assessed.
9. The State Treasurer shall credit the first \$5 of each fee collected to the Court Information Technology Fund (“CITF”). The remaining amount of each fee collected shall be credited to the Indigent Persons’ Attorney Fee Fund (“IPAFF”).

B. *The Affidavit of Indigency:*

1. Form CR-226 (“Affidavit of Indigency”) gives the defendant notice that s/he will be charged an attorney appointment fee if s/he is convicted or pleads guilty. *See* the section on Side Two titled “Notice To Persons Requesting a Court-Appointed Lawyer.”

C. *Attorney Advises Court About any Prior Assessment of the Fee for the Same Appointment on the Fee Application:*

1. At the conclusion of a case, the appointed attorney shall advise the Court if s/he was appointed to represent the defendant in another case(s) at the time of the appointment to this case(s) and s/he already submitted a fee application for that case(s) in which the attorney appointment fee was charged.
2. The current versions of forms CR-225 (“Non-Capital Criminal Case Trial Level Fee Application Order for Payment Judgment Against Indigent,” Rev. 09/15) and CR-425 (“Capital Case Fee Application Order for Payment Judgment Against Indigent,” Rev. 02/20) both require the attorney to supply this information as part of the application for payment. Similarly, the new versions of those forms—CR-225 (Rev. 12/20) and CR-425 (Rev. 12/20)—also require the attorney to supply this information as part of the application for payment. Effective December 1, 2020, attorneys should begin using the new versions of the fee application forms.

D. Assessing the Attorney Appointment Fee:

1. In cases that are disposed before December 1, 2020 in which the \$60 appointment fee is due, the appointment fee shall be included on form CR-381 (“Criminal Bill of Costs,” Rev. 08/17) at the time of disposition. The August 2017 version of form CR-381 includes separate budget codes for the \$5 allocated to the CITF (budget code 24615), and the \$55 allocated to the IPAFF (budget code 24612). In cases that are disposed on or after December 1, 2020 in which the \$75 appointment fee is due, the appointment fee shall be included on form CR-381 (“Criminal Bill of Costs,” Rev. 12/20) at the time of disposition. The December 2020 version of form CR-381 includes separate budget codes for the \$5 allocated to the CITF (budget code 24615), and the \$70 allocated to the IPAFF (budget code 24612).
2. In cases where the attorney appointment fee is due, the Court should use Section III. or Section IV. of the appropriate fee application—forms CR-225 (“Non-Capital Criminal Case Trial Level Fee Application Order for Payment Judgment Against Indigent,” Rev. 12/20) and CR-425 (“Capital Case Fee Application Order for Payment Judgment Against Indigent,” Rev. 12/20), respectively—to enter Judgment #2 for the attorney appointment fee after disposition.¹
 - a. If the defendant was convicted of a criminal offense and the attorney applicant did not check the box on the front of CR-225 or CR-425 stating that s/he was appointed to represent the defendant in another case(s) at the time of the appointment to this case(s) and s/he already submitted a fee application for that case(s) in which the attorney appointment fee was charged, the Judge should not check any of the “opt out” boxes under Judgment #2 and should simply sign Section IV. or Section V. of the applicable form to enter a judgment for the attorney appointment fee.
 - b. If the case is still pending, the defendant was not convicted, or the attorney applicant checked the box on the front of CR-225 or CR-425 stating that s/he was appointed to represent the defendant in another case(s) at the time of the appointment to this case(s) and s/he already submitted a fee application for that case(s) in which the attorney appointment fee was charged, the Judge should “opt-out” of entering Judgment #2 by checking the appropriate box in that section.
3. If the Court orders Judgment #2 and the date of disposition reported on the front of the fee application form is before December 1, 2020, the Clerk should docket a judgment in the amount of \$60. If the Court orders Judgment #2 and the date of disposition reported on the front of the fee application form is on or after December 1, 2020, the Clerk should docket a judgment in the amount of \$75.

¹ A number of judgment forms allow the Court to order or recommend that a defendant pay attorney fees and expenses as a condition of parole, probation, or work release. *See* AOC-CR-301; AOC-CR-302; AOC-CR-310; AOC-CR-315; AOC-CR-601; AOC-CR-602; AOC-CR-603; AOC-CR-604; AOC-CR-607; AOC-CR-608; AOC-CR-609. The total amount due including the appropriate appointment fee should be entered in the box on each form labeled one of the following: “Reimbursement for Attorney Fee(s) And Other Expenses,” “Attorney’s Fee(s),” “Attorney’s Fee For This Proceeding,” or “Attorney’s Fee This Proceeding.” However, inability, failure, or refusal to pay the fee shall not be grounds for holding the defendant in contempt.

QUESTIONS?

If you have questions about these procedures, please contact Whitney B. Fairbanks, Deputy Director and General Counsel of the IDS Office, at (919) 354-7200 or Whitney.B.Fairbanks@nccourts.org.

Effective December 1, 2020, G.S. 7A-455.1 will provide as follows:

§ 7A-455.1. Appointment fee in criminal cases

- (a) In every criminal case in which counsel is appointed at the trial level, the judge shall order the defendant to pay to the clerk of court an appointment fee of seventy-five dollars (\$75.00). No fee shall be due unless the person is convicted.
- (b) The mandatory seventy-five dollar (\$75.00) fee may not be remitted or revoked by the court and shall be added to any amounts the court determines to be owed for the value of legal services rendered to the defendant and shall be collected in the same manner as attorneys' fees are collected for such representation.
- (c) Repealed by Session Laws 2005-250 s. 3, effective August 4, 2005.
- (d) Inability, failure, or refusal to pay the appointment fee shall not be grounds for denying appointment of counsel, for withdrawal of counsel, or for contempt.
- (e) The appointment fee required by this section shall be assessed only once for each attorney appointment, regardless of the number of cases to which the attorney was assigned. An additional appointment fee shall not be assessed if the charges for which an attorney was appointed were reassigned to a different attorney.
- (f) Of each appointment fee collected under this section, the sum of seventy dollars (\$70.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the sum of five dollars (\$5.00) shall be credited to the Court Information Technology Fund under G.S. 7A-343.2. These fees shall not revert.
- (g) The Office of Indigent Defense Services shall adopt rules and develop forms to govern implementation of this section.