

PROCEDURES FOR REVIEW OF DECISIONS OF THE IDS DIRECTOR

Effective September 25, 2015, the Commission on Indigent Defense Services adopts the following amended procedures to govern review of decisions of the IDS Director. Whenever the term IDS Director is used in these procedures, it refers to the IDS Director or his or her designee.

1. Review Committee:

The Chair of the IDS Commission shall appoint at least four members of the Commission to serve on the Review Committee. Members of the committee shall serve between six (6) and twelve (12) consecutive months, at the pleasure of the Chair.

Two members of the committee shall constitute a quorum. A majority vote of the committee members present is required to reverse or modify a decision of the IDS Director. Any committee member may recuse himself or herself from a decision in a particular case if, in the judgment of that committee member, his or her participation would be inappropriate.

2. Review of the Denial of an Application to an Attorney or Expert Roster or Removal from an Attorney or Expert Roster:

A. *Review:* Any person who has had his or her application denied for a place on any attorney or expert roster, or who has been removed from a roster, may request review of that decision by the Review Committee. If the Review Committee upholds the decision to deny the person's application for a place on any roster, or to remove the person from a roster, but the Review Committee's decision is not unanimous, the attorney or expert may then request review of the Review Committee's decision from the full IDS Commission.

B. Review Procedure:

1. *Review by the Review Committee:* If the IDS Director denies an application for any roster, or removes an attorney or expert from a roster, the Director shall provide to the applicant a written statement summarizing the basis of the adverse decision. Any request for review of the Director's decision must be in writing, addressed to the IDS Director, and post-marked no later than thirty (30) days after notice of the action which is the subject of the request for review. The request for review shall not stay the action which is the subject of the review. The person requesting review may submit written materials for consideration by the Review Committee. The IDS Director shall provide to the Review Committee all materials submitted by the person, the written statement summarizing the basis of the adverse decision, and any other materials the IDS Director believes will aid the Committee in its review. If the review is from the denial of a roster application, the IDS Director shall also provide to the Review Committee a copy of the person's application file. The attorney or expert shall not appear in person before the Review Committee, unless requested to do so by the Review Committee.

The Review Committee shall reach a decision within no more than forty-five (45) days after receipt of the written request for review. The Review Committee may reverse or uphold the Director's decision, and shall notify the person by letter of the result of the review. If the Director's decision to deny a roster application or remove an attorney or expert from a roster was based on a determination that the person was not qualified for the applicable roster, the Review Committee shall not reverse the Director's decision unless the Committee is fully satisfied that the person fulfills all of the qualifications for the roster in question, has the required knowledge and skill necessary for inclusion on that roster, and will apply that knowledge and skill with appropriate thoroughness and preparation. If the Director's decision to deny a roster application or remove an attorney or expert from a roster was based, as part of a periodic review of the roster, on a determination that a smaller roster will better serve the goals of ensuring the best possible representation and of delivering quality services in the most efficient and cost-effective manner, the Review Committee shall not reverse the decision unless it is fully satisfied that the decision was arbitrary, capricious, or an abuse of discretion.

2. *Review by the Commission:* If the Review Committee upholds the decision to deny an application for a place on any roster, or to remove an attorney or expert from a roster, but the Review Committee's decision is not unanimous, any request for review by the full IDS Commission must be in writing, addressed to the IDS Director, and post-marked no later than thirty (30) days after the date of the Review Committee's letter notifying the person of its decision. The review shall not stay the action which is the subject of the request for review. The attorney or expert may submit further materials for consideration by the IDS Commission. The IDS Director shall provide to the IDS Commission all materials submitted by the person, the written statement summarizing the basis of the adverse decision, the Review Committee's letter notifying the person of the result of the initial review, and any other materials the IDS Director believes will aid the Commission in its review. If the review is from the denial of a roster application, the IDS Director shall also provide to the Commission a copy of the person's application file. The attorney or expert shall not appear in person before the Commission, unless requested to do so by the Commission.

The Commission shall consider the request for review at the next regularly scheduled Commission meeting, unless the Commissioners have not had adequate time from the date of the Review Committee's decision to review all materials relevant to its decision. A majority of the Commissioners present is required to reverse the decision of the Review Committee. The Director shall promptly notify the person of the result of the review by letter. If the decision by the Director to deny a roster application or remove an attorney or expert from a roster was based on a determination that the person

was not qualified for the applicable roster, the Commission shall not reverse the decision unless the Commission is fully satisfied that the person fulfills all of the qualifications for the roster in question, has the required knowledge and skill necessary for inclusion on that roster, and will apply that knowledge and skill with appropriate thoroughness and preparation. If the decision by the Director to deny a roster application or remove an attorney or expert from a roster was based, as part of a periodic review of the roster, on a determination that a smaller roster will better serve the goals of ensuring the best possible representation and of delivering quality services in the most efficient and cost-effective manner, the Commission shall not reverse the decision unless it is fully satisfied that the decision was arbitrary, capricious, or an abuse of discretion.

3. Review of a Decision to Revoke or Suspend an Attorney's Eligibility to Receive Payment in Appointed Cases:

A. *Review:* Any person who has been notified by the IDS Director that his or her eligibility to receive payment in appointed cases has been revoked or suspended for any of the following may request review of that decision by the Review Committee: (1) public discipline of any level issued by the Grievance Committee of the State Bar or the Disciplinary Hearing Commission; (2) a judicial finding of misconduct or ineffective assistance of counsel; (3) a formal admission by counsel of ineffective assistance; (4) filing of criminal charges if the IDS Director determines the charges are of a type that may undermine appointed counsel's ability to provide indigent persons with quality representation while these charges are pending. If the Review Committee upholds the decision to revoke or suspend the attorney's eligibility to receive payments from IDS, but the Review Committee's decision is not unanimous, the attorney may then request review of the Review Committee's decision from the full IDS Commission.

B. *Review Procedure:*

1. *Review by the Review Committee:* If the IDS Director revokes or suspends an attorney's eligibility to receive payment in appointed cases, the Director shall notify the attorney in writing. Any request for review of the Director's decision must be in writing, addressed to the IDS Director, and post-marked no later than thirty (30) days after notice of the action which is the subject of the request for review or no later than thirty (30) days after adoption of this Section, whichever occurs later. The request for review shall not stay the action which is the subject of the review. The attorney requesting review may submit written materials for consideration by the Review Committee. The IDS Director shall provide to the Review Committee the written notification to the attorney, all materials submitted by the attorney, a copy of the public discipline or finding of misconduct or ineffectiveness, and any other materials the IDS Director believes will aid the Committee in its

review. The attorney shall not appear in person before the Review Committee, unless requested to do so by the Review Committee.

The Review Committee shall reach a decision within no more than forty-five (45) days after receipt of the written request for review. The Review Committee may reverse, modify, or uphold the Director's decision, and shall notify the person by letter of the result of the review. The Review Committee shall not reverse or modify the Director's decision unless the Committee is fully satisfied that the attorney has the required knowledge and skill to represent indigent clients and will apply that knowledge and skill with appropriate thoroughness and preparation, and that the revocation or suspension was unnecessary to ensure that indigent clients receive quality representation and that IDS receives appropriate and accurate billing.

2. *Review by the Commission:* If the Review Committee upholds the decision to revoke or suspend an attorney's eligibility to receive payment in appointed cases, but the Review Committee's decision is not unanimous, any request for review by the full IDS Commission must be in writing, addressed to the IDS Director, and post-marked no later than thirty (30) days after the date of the Review Committee's letter notifying the person of its decision. The review shall not stay the action which is the subject of the request for review. The attorney may submit further materials for consideration by the IDS Commission. The IDS Director shall provide to the IDS Commission all materials submitted by the attorney, the written notification to the attorney, a copy of the public discipline or finding of misconduct or ineffectiveness, the Review Committee's letter notifying the attorney of the result of the initial review, and any other materials the IDS Director believes will aid the Commission in its review. The attorney shall not appear in person before the Commission, unless requested to do so by the Commission.

The Commission shall consider the request for review at the next regularly scheduled Commission meeting, unless the Commissioners have not had adequate time from the date of the Review Committee's decision to review all materials relevant to its decision. A majority of the Commissioners present is required to reverse or modify the decision of the Review Committee. The Director shall promptly notify the person of the result of the review by letter. The Commission shall not reverse or modify the decision unless the Commission is fully satisfied that the attorney has the required knowledge and skill to represent indigent clients and will apply that knowledge and skill with appropriate thoroughness and preparation, and that the revocation or suspension was unnecessary to ensure that indigent clients receive quality representation and that IDS receives appropriate and accurate billing.

4. Review of Fee and Expense Awards:

- A. *Review*: In any case where the IDS Director has done any of the following, the applicant may request review of that decision by the Review Committee: 1) denied an attorney or expert fee; 2) reduced an attorney fee below the hourly fee schedule set by the IDS Commission for the number of hours claimed; 3) in a potentially capital case at the trial level that has not been declared exceptional pursuant to IDS' "Exceptional Capital Cases" policy, reduced an attorney's pre-trial fee and expense claim that exceeds \$35,000 by more than 10%; 4) reduced an expert fee below the fee claimed; or 5) denied or reduced a claimed expense.
- B. *Exceptions*: There will be no review where: (1) the reduction is a result of a general and uniformly applied reduction in fees ordered by the Commission; (2) the fee awarded is within five hundred dollars (\$500) of the standard hourly fee for services for the number of hours claimed; or (3) the expert fee requested exceeds the amount authorized by a Court or the IDS Office, and the IDS Office has paid up to the amount authorized.
- C. *Review Procedure*: Any request for review must be in writing, addressed to the IDS Director, and post-marked no later than thirty (30) days after the date of the letter from the IDS Office notifying the applicant of the denial or reduction in fees or expenses. The review shall not delay payment of the fee in the amount the IDS Director has approved. The applicant may submit written materials for consideration by the Review Committee. The Director shall provide the Review Committee with all materials submitted by the applicant, as well as a copy of all materials in the IDS file for the case in controversy which are relevant to the fee decision. The applicant shall not appear in person before the Review Committee, unless requested to do so by the Review Committee.

The Review Committee shall reach a decision within no more than forty-five (45) days after receipt of the written request for review. The Review Committee may reverse, modify, or uphold the Director's decision, but may not reduce the fee or expense award below the amount set by the IDS Director. The Review Committee shall only reverse or modify a decision by the Director if the Committee is fully satisfied that the fee set by the Director should be modified. The Review Committee shall notify the applicant by letter of the result of its review. The decision of the Review Committee shall be final, with no further review by the Commission.

5. Distribution of Review Procedures:

The adopted review procedures and any subsequent changes shall be published on the IDS web page and distributed to all parties who are entitled to review under the procedures.

Adoption:

Policy adopted November 16, 2001; amended February 10, 2006 and January 1, 2009. New Section 3. adopted effective September 25, 2015.