

MEMORANDUM

To: Indigent Defense Experts
 Re: Expert Fee and Expense Applications (Potentially Capital Cases at the Trial Level, Appeals, and Capital Post-Conviction Cases)
 From: Office of Indigent Defense Services
 Date: Updated December 06, 2022

Prior funding authorization from the IDS Office is required for expert services in all potentially capital cases at the trial level, all direct appeals, and all capital post-conviction proceedings. Please obtain a copy of this authorization from the attorney you are working with before commencing work on a case. Absent truly exceptional circumstances, the IDS Office will not compensate experts for amounts in excess of the prior authorization.

I. Standardized Expert Rates:

A. Definitions:

- Time In Court means time testifying or observing if asked to observe by the attorney requesting the expert’s services.
- Time In Court Waiting means time the expert is sitting in court waiting to testify when the expert has been called but not yet sworn in. It does not include time spent in court observing if asked to observe by the attorney requesting the expert’s services.
- Time Out Of Court means time spent reviewing files, documents, or evidence; evaluating the defendant or respondent; preparing for testimony; meeting with the attorney; or advising the defense on the case.

B. Set Compensation Rates:

The following set compensation rates apply to the types of experts specified below for time in court, time in court waiting, time out of court, and time traveling. Such experts are not entitled to any additional hourly compensation based on years of experience.

Type of Expert	Hourly Rate
Paralegal/Legal Assistant (<i>other than in-house</i>)*	\$15
Transcriptionist (English Language)	\$20
Licensed Private Investigator**	\$55
Mitigation Specialist	\$40/\$50/\$60 (as approved by IDS)
Attorney Serving as Expert	Same rate as appointed counsel in the case

* 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) 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.

**** Private investigators must be in compliance with Chapter 74C of the General Statutes. Per the Private Protective Services Board, a private investigator must be licensed, with the following two exceptions:**

1) An investigator who is a direct employee of an attorney does not have to be licensed. Direct employment means either as a W-2 or 1099 employee. Receipt of a 1099 from IDS does not constitute being an employee of the attorney. An unlicensed investigator who is working as an employee of an attorney may only work on that attorney's cases.

2) An investigator trainee who is attempting to gain the requisite hours to become a licensed private investigator must work under the supervision of a licensed private investigator. An attorney cannot provide the statutorily mandated supervision to a private investigator trainee.

C. Base Compensation Rates by Education Level and Type of Expert:

- The hourly rates and policies outlined in the remainder of Section I. apply to all expert authorizations that are dated on or after September 1, 2011. Hourly rates for services or travel that were specified on expert authorization forms dated before September 1, 2011 will continue to be honored.
- For any expert types that are not specified in I.B., above, the following base compensation rates apply for both time in court and time out of court as defined above:

Highest Education Level or Field of Expertise	Base Hourly Rate
High School or Equivalent	\$30
Associate's Degree	\$50
Bachelor's Degree	\$70
Master's Degree	\$85
Crime Scene and Related Experts (e.g., Accident Reconstruction, Arson, Ballistics, Blood Spatter, DNA, Drug Chemistry, Fingerprint, Gang Expert, Handwriting, Toxicology, Use of Force)	\$100
CPA/Financial Expert	\$100
Pharmacy/PharmD	\$125
Information Technology Experts (e.g., Computers, Telecommunications, Digital Forensics)	\$150
Ph.D./Psy.D./Other Licensed Doctor (e.g., Doctor of Veterinary Medicine, Doctor of Nursing, Doctor of Dental Medicine)	\$200
Medical Doctor	\$250
MD with Specialty (e.g., Psychiatrist, Pathologist)	\$300

These base compensation rates shall not apply if a former state employee is called to consult or testify about work done in his or her capacity as a state employee; in such cases, the applicable base compensation rate shall be ½ the rate specified above.

- For experts who fall into multiple categories above, the highest applicable hourly rate shall apply. For instance, if an attorney is seeking funding for an accident reconstruction expert with a Ph.D. in mechanical engineering, the \$200 hourly rate for a Ph.D. shall apply.
- In addition to the base compensation rates set forth immediately above, experts covered by this section are entitled to an additional \$10 per hour if they have more than 10 years

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of experience in the field relevant to the expert services or testimony, or an additional \$20 per hour if they have more than 20 years of experience in the field relevant to the expert services or testimony.

D. Travel and Wait Time:

- For experts with set compensation rates—*i.e.*, those covered by Section I.B., above—time spent traveling and waiting in court shall be compensated at the same rate as time in court and time out of court.
- For all expert authorizations for experts with base compensation rates and experience enhancements—*i.e.*, those covered by Section I.C., above—that are dated on or after September 1, 2011, time spent traveling and waiting in court shall be compensated at ½ of the applicable hourly rate specified above.

E. Deviations from the Standardized Hourly Rates:

In extraordinary circumstances, the IDS Director may grant deviations from the standardized base compensation rates listed above when the requesting attorney demonstrates that they are necessary and appropriate based on case-specific needs and the following policies:

- Deviations may be granted if the requested expert services are in a new, emerging, or novel area and there are a limited number of experts in the field.
- Deviations may be granted if the requested expert services are so unique that there are a limited number of available and qualified experts. For example, there is only one expert who can provide the needed services (*e.g.*, the medical examiner who performed the autopsy) and he or she has refused to provide the services at the applicable standardized rate.
- Deviations may be granted based on other exceptional circumstances that justify a deviation from the standardized rates. For example, counsel needs the services of a specific type of expert and has contacted five or more experts in that field and none of the contacted experts were willing and available to provide the needed services at the needed time at the standardized rate.

Deviations shall be requested by the attorney of record on form IDS-028 (for capital cases at the trial level) or form IDS-029 (capital post-conviction cases). Before requesting a deviation from the standardized base hourly rates, counsel must consult with IDS' Forensic Resource Counsel to identify other similar experts in the required field.

II. 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.

- Unless otherwise indicated on the IDS Expert Authorization form, the maximum amount authorized includes both fees and necessary expenses.
- To obtain prior authorization in a potentially capital case at the trial level, the attorney of record should complete form IDS-028 and submit that form to the Office of the Capital Defender via email to CapitalForms@nccourts.org. 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 submit the form to the IDS Office via email to sarah.r.olson@nccourts.org.
- 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 via email to idsfeeapplications@nccourts.org.
- 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:

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. Interim and Final Fees:

- All expert fee applications should indicate whether the request is for interim or final payment.
- The IDS Office will only process interim expert fee requests when one of the following two conditions has been met: 1) the interim fee application covers a time period of 2 or more months; or 2) the interim fee application involves a payment amount of \$1,000.00 or more. Assuming those conditions have been met, an expert may submit an application for interim fees, which the IDS Director may grant in their discretion.

D. 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.
- Effective July 1, 2005, an expert fee application that is directed to the IDS Office should be comprised of four parts: 1) form IDS-003 (“Expert Witness Fee Application Award of Payment (Capital Cases and All Appeals”)); 2) one copy of the form IDS-001A (funding authorization from the Capital Defender); 3) one copy of the itemized time sheets; and 4) any required receipts.
- The expert’s itemized time sheets must provide sufficient detail regarding the expert’s services in the case to demonstrate that the claim for compensation is reasonable. At a minimum, the time sheets must reflect the expert’s time broken down according to date, description of services, and amount of time in tenths of an hour. When an expert or investigative firm submits a fee application, the time sheets also must identify the name of the person(s) who actually performed the services on each date covered by the application.
- Time sheets must be computer generated. Handwritten time sheets will not be accepted.
- The request and all documentation must be submitted as a single PDF and submitted via email to idsfeeapplications@nccourts.org.

III. 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 must seek pre-approval from the IDS Office before incurring the expense.

1. In-State Travel:¹

- a. Mileage on Privately Owned Vehicles:** The mileage rate is \$.625 per mile effective September 01, 2022 (the previous mileage rate was \$0.50 per mile). For all experts other than investigators and mitigation specialists, out-of-county travel only is reimbursable. Because in-county travel is often a core part of the duties of investigators and mitigation specialists, those experts can claim reimbursement for in-county mileage. The expert’s fee application or time sheets must indicate the number of miles traveled.
- b. Rental Vehicles:** Absent special circumstances, 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 current

¹ Reimbursement rates for travel-related expenses are based on the current travel allowances for State employees. See G.S. 138-6.

per diem rates see: <https://www.ncids.org/counsel-rates/> (“Expense Reimbursement Rates”).

- d. Lodging: The actual costs of over-night lodging will be reimbursed, not to exceed the current state authorized rate, plus actual taxes incurred. A valid hotel receipt is required, and credit card receipts are not accepted. For current lodging rates see: <https://www.ncids.org/counsel-rates/> (“Expense Reimbursement Rates”).
- e. Other: Any other travel-related expenses (e.g., parking) must be supported by receipts or, in appropriate circumstances, documentation.

2. **Long-Distance Telephone Calls**

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

3. **Photo-Copying/Single-Source Record Production:**

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 \$0.16 for double-sided copies. The applicant must indicate the number of copies prepared 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.

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.

c. Single-Source Record Production:

Copies of records that are only available from one source, such as records that must be obtained from a hospital or a state or county agency, will be reimbursed at the rate charged by the provider as long as a receipt is attached.

4. **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.

5. **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.

6. CDs/DVDs/Audiotapes/Hard Drives:

- The cost of blank CDs, DVDs, or audiotapes is reimbursable at a rate not to exceed \$1.00 each. The actual cost of commercial copying of material from one digital media to another is reimbursable with a receipt.
- Although hard drives such as jump drives are reusable and are therefore generally treated as non-reimbursable overhead expenses pursuant to Section 8.b. below, in cases in which the cost of the hard drive does not exceed the cost of the CDs or DVDs that would be needed to copy electronic materials, IDS will reimburse an expert for the cost of the hard drive if a receipt is provided. When seeking reimbursement for a hard drive, the expert must indicate the approximate number of CDs or DVDs that would have been needed to copy the electronic materials.

7. Expedited Delivery:

- Absent exceptional circumstances, IDS will not reimburse an expert for expenses associated with expedited or overnight delivery of documents. If exceptional circumstances exist, the expert must attach to the fee application a brief explanation of those circumstances.

8. Computerized 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, you will be compensated for your time according to your hourly rate, but will not be compensated any amount per search.

9. 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 for all expenses. If these expenses, cumulatively, total less than \$25.00 an applicant does not need to submit receipts or supporting documentation for them.

b. Overhead:

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

B. Prior Approval Required: Out-of-State Travel:

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

1. Travel Costs: Reasonable and pre-approved travel costs will be reimbursed with receipts. If the attorney of record completes and submits IDS' Travel Request Form, available at www.ncids.org, a travel agency that contracts with IDS (Travelectra) will make the travel arrangements for the expert and bill IDS directly. Unless the prior authorization states that travel expenses are authorized in addition to the amount approved for services, travel expenses paid directly by IDS shall be deducted from the amount of funding authorized for the expert. IDS shall provide the expert with a copy of any invoices paid directly by IDS for the expert's records.
2. 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 current per diem rates see: <https://www.ncids.org/counsel-rates/> ("Expense Reimbursement Rates").
3. Lodging: The actual costs of over-night lodging will be reimbursed, not to exceed the current state authorized rate, plus actual taxes incurred. A valid hotel receipt is required, and credit card receipts are not accepted. For current lodging rates see: <https://www.ncids.org/counsel-rates/> ("Expense Reimbursement Rates").