

MEMORANDUM

To: Indigent Defense Experts
Re: Expert Fee and Expense Applications (Non-Capital and Non-Criminal Cases at the Trial Level)
From: Office of Indigent Defense Services
Date: Updated March 01, 2022

Prior funding authorization from a Court is required for expert and investigative services in all non-capital and non-criminal cases at the trial level. Authorizations must be sought by the attorney for the defendant or respondent completing and submitting form AOC-G-309, along with a supporting motion, to the presiding judge. If permitted by case law, the attorney for the defendant or respondent may submit that form and the supporting motion *ex parte*.

The requesting attorney does not need to complete form AOC-G-309 for non-expert flat fee services, such as polygraph examinations, medical procedures, lab testing, or defense requested sentencing plans; to seek prior approval for such services, the attorney should submit a motion setting forth the factual justification for the request and a proposed Order to the Court. If approved by the Court, IDS will pay a flat fee of \$500 for a defense requested sentencing plan. To request payment for flat fee services, the vendor should attach a copy of an itemized invoice to the Court Order and mail both to IDS Financial Services at P.O. Box 2448, Raleigh, NC 27602.

Experts should obtain a copy of the prior authorization from the attorney assigned to the case before commencing work on a case.

The IDS Office will not compensate experts for amounts in excess of the Court's prior authorization.

I. Standardized Expert Rates for Services and Travel:

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 waiting in court, 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 | \$15 |
| Transcriptionist (English Language) | \$20 |
| Licensed Private Investigator* | \$55 |
| Mitigation Expert/Social Worker | \$55 |
| Attorney Serving as Expert | Same rate as appointed counsel in the case |

* 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 this Section apply to all expert authorizations that are dated on or after October 17, 2011. Hourly rates for services or travel that were specified on Court Orders dated before October 17, 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 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—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 to 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 by competing form AOC-G-310 and submitting it to the IDS Director pursuant to the instructions on that form. 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 from a Court is required for the use of any expert services in any non-capital criminal or non-criminal case.
- Only the expert listed on the AOC-G-309 who has been approved by the Court can be paid for services rendered.
- To obtain prior authorization, the attorney of record should complete form AOC-G-309 and submit it and a supporting motion to the Court.

B. The Expert Fee and Expense Application:

- All expert fee applications in non-capital criminal and non-criminal cases at the trial level should be comprised of three parts: 1) form AOC-CR-309 (“Application and Order for Defense Expert Witness Funding in Non-Capital Criminal and Non-Criminal Cases at the Trial Level”); 2) one copy of the itemized time sheets; and 3) any required receipts. If the attorney sought and obtained approval for a deviation from the standard hourly rate, the expert fee application should also be accompanied by form AOC-CR-310 (“Defense Petition for Expert Hourly Rate Deviation in Non-Capital Criminal and Non-Criminal Cases at the Trial Level and IDS Approval or Denial”).
- Applications will be accepted directly from the expert, or from the attorney of record on behalf of the expert.
- 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. Amount of time should be in tenths of an hour.
- Time sheets must be computer generated. Handwritten time sheets will not be accepted.
- All expert fee applications in non-capital criminal and non-criminal cases at the trial level should be submitted to **IDS’ Financial Services Office at P.O. Box 2448, Raleigh, NC 27602.**

III. Reimbursable Expenses:

A. Travel:¹

1. **Mileage on Privately Owned Vehicles:** Mileage is reimbursed at the current state rate. 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 mileage rate is \$0.50 per mile. The expert’s fee application or time sheets must indicate the number of miles traveled.

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

2. 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.
3. Other Travel (e.g., airfare): 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 (Maupin) 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.
4. 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").
5. 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").
6. Other: Any other travel-related expenses (e.g., parking) must be supported by receipts.

B. Photo-Copying:

1. 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.

2. 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. 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.

D. CDs/DVDs/Audiotapes:

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

E. 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.

F. Computerized Research:

The actual costs of any such computerized searches (e.g., Courtsearch, NC 123, and DMV and DOC 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.

G. Other Expenses:

1. **Miscellaneous:**

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

2. **Overhead:**

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

3. **Other Persons:**

Only the expert listed on the AOC-G-309 who has been approved by the Court can be paid for services rendered. No payment will be issued to a subcontractor, assistant, or other person whose services are listed as an expense.