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AMENDED MEMORANDUM

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

FROM: Office of Indigent Defense Services

DATE: Updated October 12, 2011

RE: UPDATED PROCEDURES TO IMPLEMENT ATTORNEY APPOINTMENT 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 2010-31).

In 2002, the General Assembly enacted a non-refundable attorney appointment fee to be paid by all indigent criminal defendants who are appointed counsel at State expense. *See* G.S. 7A-455.1. On February 6, 2004, the Supreme Court of North Carolina filed an opinion in *State v. Webb*, 358 N.C. 92, 591 S.E.2d 505 (2004), which held the following:

- 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.)
- The attorney appointment fee may not be imposed upon defendants who are acquitted or whose cases are dismissed.

In Session Law 2005-250, the General Assembly amended G.S. 7A-455.1 to comply with the Supreme Court’s opinion in *Webb*, effective August 4, 2005. The General Assembly adopted additional amendments to the statute in Session Law 2009-451, effective August 7, 2009. Section 15.17(I)(b) of Session Law 2009-451 also directed the Administrative Office of the Courts to monitor the collection of fees pursuant to this statute, as well as the recoupment rates in each county, and to report its findings quarterly.

I. CURRENT G.S. 7A-455.1

Session Law 2010-31, § 15.11 again revised G.S. 7A-455.1 to increase the amount of the attorney appointment fee effective October 1, 2010. For all fees assessed or collected before October 1, 2010, the amount of the attorney appointment fee is \$50. For all fees assessed or collected on or after October 1, 2010, the amount of the fee is \$60.

Effective October 1, 2010, the statute 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 sixty dollars (\$60.00). No fee shall be due unless the person is convicted.
- (b) The mandatory sixty-dollar (\$60.00) 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 fifty-five dollars (\$55.00) 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.

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 2010-31.

II. PROCEDURES TO IMPLEMENT THE ATTORNEY APPOINTMENT FEE

A. General Principles:

1. 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 before October 1, 2010, the amount of the fee is \$50, even if the fee is not actually collected until after October 1, 2010.
2. For all fees assessed or collected on or after October 1, 2010, the amount of the fee is \$60. Thus, if a defendant is convicted on or after October 1, 2010, the amount of the fee is \$60.
3. 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.
4. 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.

5. 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.
6. 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. Forms CR-225 (“Non-Capital Criminal Case Trial Level Fee Application Order for Payment Judgment Against Indigent,” Rev. 4/06) and CR-425 (“Capital Case Fee Application Order for Payment Judgment Against Indigent,” Rev. 1/09) 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. 10/10) and CR-425 (Rev. 10/10)—also require the attorney to supply this information as part of the application for payment. Effective October 1, 2010, 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 October 1, 2010 in which the \$50 appointment fee is due, the appointment fee shall be included on form CR-381 (“Criminal Bill of Costs,” Rev. 9/09) at the time of disposition. The September 2009 version of form CR-381 includes separate budget codes for the \$5 allocated to the CITF (budget code 24615), and the \$45 allocated to the IPAFF (budget code 24612). In cases that are disposed on or after October 1, 2010 in which the \$60 appointment fee is due, the appointment fee shall be included on form CR-381 (“Criminal Bill of Costs,” Rev. 10/10) at the time of disposition. The October 2010 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).
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. 10/10) and CR-425 (“Capital Case Fee Application Order for Payment Judgment Against Indigent,” Rev. 10/10), respectively—to enter Judgment #2 for the attorney appointment fee after disposition.¹

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-316; AOC-CR-601; AOC-CR-602; AOC-CR-603; AOC-CR-604; AOC-CR-607; AOC-CR-608; AOC-CR-609; AOC-CR-610. The total amount due including the appropriate appointment fee should be entered in the box on each form labeled

- 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 October 1, 2010, the Clerk should docket a judgment in the amount of \$50. If the Court orders Judgment #2 and the date of disposition reported on the front of the fee application form is on or after October 1, 2010, the Clerk should docket a judgment in the amount of \$60.

III. QUESTIONS?

If you have questions about these procedures, please contact Danielle M. Carman, Assistant Director and General Counsel of the IDS Office, at (919) 354-7200 or Danielle.M.Carman@nccourts.org.

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.