

**CAP PER MITIGATION SPECIALIST ON THE NUMBER OF OPEN CAPITAL CASES  
AT THE TRIAL OR POST-CONVICTION LEVEL**

**IDS Policy:**

To ensure that capital defendants receive the mitigation specialist services to which they are entitled under the Sixth Amendment to the United States Constitution, *see Rompilla v. Beard*, 545 U.S. 374, 125 S. Ct. 2456 (2005), and *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527 (2003), the IDS Commission has adopted the following policy:

A mitigation specialist ordinarily shall not handle more than eight open potentially capital cases at the trial level that have not yet been declared non-capital, or eight open capital post-conviction cases in which a motion for appropriate relief has not yet been filed, or some combination of both. However, after examining the nature of a mitigation specialist's pending caseload and the nature and location of the pending case requiring mitigation services, funding may be authorized for a mitigation specialist in one or more cases beyond eight with the approval of the IDS Director.

This policy applies to all mitigation specialist funding authorizations made on or after August 1, 2010, and does not require a mitigation specialist who has a pending caseload in excess of the limit on August 1, 2010 to withdraw services from any of the previously authorized cases.

**Commentary:**

The presumptive cap of eight open capital cases per mitigation specialist is consistent with the presumptive cap of eight open potentially capital cases at the trial level per private appointed counsel, which is, in turn, based on the average pending caseloads of full-time assistant capital defenders in various districts across the State.

**Adoption:**

Policy adopted August 1, 2010.

**Authority:**

G.S. 7A-498.5(c)(6) and (c)(7).