

RESOLUTION CONCERNING REDUCED RATES OF COMPENSATION
FOR PRIVATE ASSIGNED COUNSEL

Commission on Indigent Defense Services

June 2011

Introduction

On May 20, 2011, the Commission on Indigent Defense Services was forced to reduce significantly the rate of compensation for attorneys and other professionals performing work that is necessary to ensure competent legal representation for those who are poor and face criminal charges, a loss of freedom through civil commitment, or the loss of their children. The reduction in rates was necessary because of the reduction in State funding available for indigent representation. The Commission attempted to meet the demands of the budget while ensuring that the constitutional and statutory rights to counsel continue to be honored in substance and not only in name. Due to the depth of the expected cuts to the indigent defense budget, the Commission was unable to adopt compensation rates that would both meet the new budget and ensure the minimum level of representation demanded by the Constitution. While the new rates will significantly reduce spending for FY12 and beyond, the reductions will nonetheless likely be insufficient to avoid adding to the existing shortfall in the private assigned counsel fund. Thus, the Commission expects that, absent legislative action, private assigned counsel will not only receive significantly reduced compensation for their important work, but will suffer from greater payment delays at the close of FY12 than are now being experienced.

The Commission has concerns about whether the new rates will prove adequate to ensure that the constitutional and statutory rights to counsel are honored in North Carolina. To the extent that private counsel are willing to subsidize North Carolina's constitutional and statutory obligations to provide adequate legal counsel to the poor, the Commission is grateful for their service. However, the Commission believes that the new rates do not provide reasonable compensation for the work of trained professionals who serve a vital role in our system of justice. Adequate and timely compensation, which takes into account the overhead and other costs borne by private professionals, is a necessary component of an adequate system of indigent representation. The American Bar Association has recognized that: "Assigned counsel should receive prompt compensation at a reasonable hourly rate and should be reimbursed for their reasonable out-of-pocket expenses. Assigned counsel should be compensated for all hours necessary to provide quality legal representation." *See* Standard 5-2.4 of the American Bar Association Standards for Criminal Justice, Providing Defense Services (3rd ed.) The Commission has serious reservations as to whether the new rates meet this standard.

Resolution

Whereas the resources available for ensuring that North Carolina continues to meet its constitutional and statutory obligations to provide competent counsel to indigent defendants and others with a right to counsel have been greatly reduced, and

Whereas, the budget passed by the North Carolina General Assembly directs the Commission on Indigent Defense Services to reduce the rate of compensation for private assigned counsel, who perform vital work that enables North Carolina to meet its constitutional and statutory obligations, and

Whereas, the constitutional and statutory rights to competent counsel can only be met by providing adequate and timely compensation to counsel, which cannot be accomplished with the resources that will be available to the Office of Indigent Defense Services,

It is hereby resolved that the new, lower rates of compensation that the Commission approved on May 20, 2011 will not provide reasonable or adequate compensation for counsel; that the new rates are unwise as a matter of policy; that the new rates will not prevent an increasing shortfall in the private assigned counsel fund, but are necessary to avoid stopping payments to assigned counsel in the middle of the fiscal year and accumulating an untenable level of debt; and that the inadequate and untimely compensation of private counsel may undermine the constitutional and statutory rights to counsel for indigent defendants and respondents in North Carolina.