

MANDATORY CONSULTATION & NOTIFICATION POLICIES
FOR CAPITAL POST-CONVICTION CASES

IDS Policies:

Mandatory Consultations:

All attorneys who are appointed to capital post-conviction cases will be required to schedule a consultation with the Center for Death Penalty Litigation (“CDPL”) within 60 days of their appointment. *See* IDS Rule 2C.4(a) (2001). This policy shall apply to every attorney appointment in a capital post-conviction case that is made on or after the policy’s effective date, including appointments to cases that were recently affirmed on direct appeal and to pending post-conviction cases from which a prior attorney has withdrawn.

Due to the complexity of the substantive and procedural law that governs capital post-conviction litigation, early consultations with attorneys who have specialized knowledge of death penalty jurisprudence should help counsel provide superior services to capital defendants. We hope early consultations will assist counsel in properly and timely presenting all potentially meritorious claims, and lessen the possibility of procedural default, inadvertent waiver, and failure to exhaust state remedies.

The IDS Office hereby adopts the following new procedures with respect to scheduling the mandatory consultations:

- 1) After being appointed by the IDS Director or IDS Assistant Director to a capital post-conviction case, counsel shall contact CDPL’s Post-Conviction Unit to schedule a consultation, by calling Barrie Wallace at (919) 956-9545 or emailing her at barrie@cdpl.org. Counsel must schedule the consultation within 60 days of the date they are appointed to the case.
- 2) Even in cases where CDPL has a conflict of interest, counsel shall contact Barrie Wallace as set forth in 1) above. Ms. Wallace will then refer counsel to an appropriate out-of-office attorney to perform the consultation.
- 3) The site of consultations performed by CDPL staff pursuant to 1) above will typically be at the CDPL office in Durham. If travel to Durham presents a significant problem for counsel, the site of the consult will be at a location mutually agreeable to counsel and CDPL staff. The site of consults performed by non-CDPL staff pursuant to 2) above will be at the consultant’s office or another location mutually agreeable to counsel and the consultant.

Mandatory Notifications:

The IDS Office hereby adopts the following new procedures to assist CDPL staff in tracking capital post-conviction cases throughout the state:

- 1) Counsel shall notify CDPL of the deadlines and events set forth in a) through e) below in any capital post-conviction case to which they are appointed. Counsel may make the required notifications by sending an email to barrie@cdpl.org, or by completing a form that is available on the IDS website and faxing or emailing it according to the instructions

on the form. To access the form, go to www.ncids.org, click on “Forms & Applications,” click on “Capital Post-Conviction Forms,” and then click on “Notice of Deadlines & Events.”

- a) If counsel obtains any extensions to file the MAR, counsel shall notify CDPL of the new filing deadline within 5 days of obtaining the extension.
 - b) Counsel shall notify CDPL of the date the MAR is filed within 5 days of filing the MAR.
 - c) Counsel shall notify CDPL of the date the State filed its answer to the MAR within 5 days of receiving that answer.
 - d) If an evidentiary hearing is granted, counsel shall notify CDPL of the scheduled date for that hearing within 5 days of receiving notice of the hearing date.
 - e) Counsel shall notify CDPL of the outcome of the MAR and date of the Court’s Order within 5 days of receiving the Order.
- 2) Counsel shall submit a copy of the MAR that is filed to CDPL within 10 days of the filing date. Counsel may email a copy of the MAR to barrie@cdpl.org, or mail a copy to:

Center for Death Penalty Litigation
201 W. Main St., Suite 301
Durham, NC 27701

Your cooperation in complying with these new procedures is greatly appreciated. If you have any questions, please contact:

- Whitney B. Fairbanks, Assistant Director of the IDS Office, at (919)-354-7200; or
- Gretchen Engel, Executive Director at CDPL, at (919) 956-9545.

Policy effective September 1, 2004; updated March 10, 2008.

Authority:

G.S. 7A-451(c), 7A-451(d); IDS Rules, Rule 2C.2, Rule 2C.3(a), Rule 2C.4(a).