

**OFFICE OF  
INDIGENT DEFENSE SERVICES  
STATE OF NORTH CAROLINA**

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To: Indigent Defense Attorneys  
From: W. James Payne, IDS Commission Chair,  
Thomas Maher, IDS Executive Director  
Date: October 18, 2017

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**NOTICE TO PRIVATE ASSIGNED COUNSEL REGARDING PARTIAL RESTORATION  
OF HOURLY RATES AND CORRESPONDING INCREASE IN CONTRACT AND FEE  
SCHEDULES**

In May 2011, the Indigent Defense Services Commission was required to reduce the hourly rate paid to private assigned counsel. This reduction was in response to the ongoing budget crisis. The IDS Commission always believed that this reduction should be temporary and that the rates adopted threatened the ability of IDS to provide counsel with the resources necessary to provide the effective representation that our clients deserve. Since 2011 the hourly rates have been further eroded by increases in the cost of living, so that a \$5 per hour restoration in 2017 will only erase the impact of inflation. In short, there is a pressing need to begin to restore the private assigned counsel rate so that counsel receive the same effective rate of compensation paid before the reductions in 2011. To date, the legislature has not provided the recurring funding necessary for restoration of the rates.

For many years IDS had significant debt at the end of each fiscal year. That debt was slowly reduced as a result of (1) the low hourly rate paid to counsel which allowed IDS to meet the annual demand and pay down some of the debt each year; (2) restrictions on other parts of the IDS budget; and, (3) non-recurring appropriations from the legislature. At the end of FY2017 IDS had no carry forward debt. Our projections for spending for this fiscal year and beyond allow IDS to begin to address the serious problem of the low hourly rates.

On September 22, the IDS Commission voted for a partial restoration of some of the hourly rates paid to counsel. This decision was based on our spending projections, our current budget and concern about returning to an annual shortfall situation. It is important to understand that the Commission fully recognizes that all of the hourly rates need to be restored, and that it is just as important to provide effective assistance of counsel to clients in district court as it is for clients in superior court. Indeed, we intend to continue to seek recurring funding to allow for restoration of all rates, and will be asking for your active involvement in that effort. Nonetheless, with the modest

recurring funding that is currently available, the following changes are being made to the hourly rates and mileage rates:

Case Type	Current Rate	New Rate	Implementation
Class A – D Felonies paid by hourly rate (including satellite based monitoring “bring back” hearings)	\$70	\$75	Cases finally disposed on or after November 1, 2017
Non-capital appeals and non-capital post-conviction where the most serious conviction was a Class A – D felony, and appeals of satellite based monitoring hearings	\$70	\$75	Cases where the “Date of Last Appellate Ruling” is November 1, 2017 or later and MARs finally disposed after November 1, 2017 <sup>1</sup>
Class A – D felonies disposed in district court pursuant to uniform fee	\$400	\$425	Cases finally disposed on or after November 1, 2017
Class A – D felonies adjudicated and disposed in juvenile division pursuant to uniform fee	\$500	\$535	Cases finally disposed on or after November 1, 2017
Mileage	\$0.40	.50	Fee applications received on or after November 1, 2017
Capital cases (cases that are actually prosecuted as capital cases, including capital appeals and capital post-conviction)	\$85	\$90	Work done on or after November 1, 2017
High Level Felonies Paid by Contract	\$23,500	\$25,300	Certifications made by December 7, 2017 for work done October 1, 2017 or later

<sup>1</sup>“Date of Last Appellate Ruling” means one of the following: (1) the date the reviewing court’s mandate is or will be issued or (2) the date the Supreme Court denies a Petition for Discretionary Review.

The new hourly rate is to be applied prospectively. In no case should it be applied retroactively. In other words, interim fee applications approved under the current rate will not be revisited even if the case is finally disposed or the date of the last appellate ruling is November 1, 2017 or later.

For counsel providing representation on high level felonies under contracts, or for high level felonies resolved in district court in counties that use a fee schedule, there will be a proportionate increase in the non-hourly compensation. The current compensation for a single High Level Felony unit under the contract system will increase by \$1,800.00 annually, or from \$23,500.00 to \$25,300.00. The counties operating under the Uniform Fee Pilot will see the following fee increases based on the rate restoration:

- Class A-D felonies disposed of in district court will increase from \$400.00 to \$425.00; and,
- Class A-D adjudications and disposition in juvenile delinquency proceedings will increase from \$500.00 to 535.00.

For potentially capital cases, this means that there are now three hourly rates: While the case is potentially capital, the rate remains \$85, and if the case becomes non-capital, either because the prosecution informs counsel that the case will not be a capital case or does not declare the case capital in the first 12 months, the rate will revert to the current \$75 an hour. The new \$90 an hour rate will apply at the trial level for work done after the case is declared capital at a Rule 24 hearing, and for capital appeals and capital post-conviction work. Counsel should submit a new IDS-037 (Case Status Fee Application Addendum – Potentially Capital Cases at the Trial Level) for work done on a case that is proceeding capitally on or after November 1, 2017.

IDS is pleased that we have been able to take this small step toward addressing the low compensation for private counsel, and we are committed to continue work to restore all of the rates. We intend to continue to seek recurring funding to allow for restoration of all rates and, as noted above, will be asking for your active involvement in that effort.