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Notice to Private Assigned Counsel Regarding Hourly Rates of Compensation

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On April 27, 2011, the IDS Office notified appointed attorneys, judges, and clerks that it had become clear that the General Assembly intends to severely reduce IDS' budget on top of existing underfunding, therefore making it impossible for IDS to continue to compensate private assigned counsel ("PAC") at the present rates. That notice also stated that the IDS Commission would be discussing new rates of compensation for PAC, investigators, mitigation specialists, and others who perform needed services for indigent defendants and respondents at its quarterly meeting on May 20, 2011.

At the May 20 meeting, the IDS Commission voted to implement a number of rate reductions, which the IDS Commission and IDS Office deeply regret. While approving the modified rate schedule, the Commission adopted a resolution stating that the rate reductions are being imposed on IDS by budgetary constraints; that the new rates are unreasonably low and may not be sufficient to ensure that indigent persons receive competent counsel; and that the rate reductions are necessary to avoid stopping payments to PAC and necessary defense experts in the middle of the fiscal year and accumulating an untenable level of debt.

New PAC Hourly Rates:

The new rates outlined below will apply to all cases in which counsel was appointed on or after May 2, 2011. For capital post-conviction, abuse/neglect/dependency, termination of parental rights, and child support contempt cases, the new rates will apply to work done on or after July 1, 2011 even for cases in which counsel was appointed prior to May 2, 2011. Those exceptions are based on the lengthy nature of those proceedings. (Because the fee application forms do not include a field for the appointment date, attorneys who were appointed to cases before May 2, 2011 should write the appointment date on the top of the fee application form or attach a copy of the appointment order to their fee application.) IDS Rule 1.9(a)(2) will soon be revised to reflect the new reduced rates set forth below.

PAC Fees Set By District Court Judges:

- For all cases finally disposed in District Court where the most serious original charge was a Class A through D felony, the new rate will be \$70 per hour.
- For all other cases finally disposed in District Court, the new rate will be \$55 per hour.
- Any non-capital post-conviction claims brought in District Court should be paid at the same reduced rates, but based on the most serious conviction. For example, a non-capital

post-conviction challenge to a misdemeanor conviction that is brought in District Court should be paid at the \$55 hourly rate.

PAC Fees Set By Superior Court Judges:

- For all cases finally disposed in Superior Court where the most serious original charge was a Class A through D felony, the new rate will be \$70 per hour.
- For all other cases finally disposed in Superior Court, including misdemeanor appeals, the new rate will be \$60 per hour.
- Any non-capital post-conviction claims brought in Superior Court should be paid at the same rates, but based on the most serious conviction. For example, a non-capital post-conviction challenge to a Class B felony conviction that is brought in Superior Court should be paid at the \$70 hourly rate, but a non-capital post-conviction challenge to a Class E felony conviction that is brought in Superior Court should be paid at the \$60 hourly rate.

PAC Fees Set By Clerks:

- For all cases finally disposed before a Clerk, the new rate will be \$55 per hour.

PAC Fees Set By IDS:

- For non-capital direct appeals to the Appellate Division in cases in which the most serious conviction was a Class A through D felony, the new rate will be \$70 per hour.
- For all other non-capital direct appeals to the Appellate Division, including civil appeals, the new rate will be \$60 per hour.
- For potentially capital cases at the trial level, the new rate will be \$85 per hour, with a reduction to \$75 per hour after a case has been declared non-capital through communication by the assigned prosecutor to defense counsel that the case will not be prosecuted capitally, a formal declaration by the assigned prosecutor in open court or at a Rule 24 hearing that the case will not be prosecuted capitally, or after 12 months have passed since the date the warrant was issued without a Rule 24 hearing.
- For direct appeals from a sentence of death, the new rate will be \$85 per hour.
- For capital post-conviction cases, the new rate will be \$85 per hour.

Expert Fees Set By IDS:

- For investigators in cases under IDS' direct oversight where the authorization is dated on or after June 1, 2011, the new maximum rate will be \$50 per hour.
- For mitigation specialists in cases under IDS' direct oversight where the authorization is dated on or after June 1, 2011, the new rates will be \$35, \$45, and \$55 per hour, depending on the roster for which the mitigation specialist has been approved.
- Reductions in the hourly rates charged by other types of experts will be the subject of continuing Commission discussion.

The IDS staff will be working to make comparable reductions to all pre-approved flat fees and contracts. We will also be preparing new rate calculators to distribute to the judges to aid them in applying the new rates.

We realize that the State's budget has not yet been finalized. However, the longer the Commission delays rate reductions, the deeper they would have to be to generate savings. In addition, the debt from FY11 and the underfunding that was already built into IDS' FY12 continuation budget would leave IDS with an unsustainable shortfall regardless of the depth of any further cuts by the General Assembly. Please note that the rate reductions set forth above are projected to generate approximately \$16.7 million annually once they are fully implemented, with projected savings next fiscal year closer to \$12.5 million. Thus, the reductions, while severe, will still leave IDS with a deficit next fiscal year of close to \$20 million under the House version of the budget, which will cause a significant payment delay for appointed attorneys and experts.

Public Defender Office Recoupment Rates:

Public defender offices should utilize the new reduced PAC rates in calculating the value of their services for recoupment purposes.

Conclusion:

We recognize that the current rates are already modest when overhead is taken into account and that some qualified counsel may stop handling indigent cases because of the reductions. For those of you who are able to continue to provide quality representation at the new reduced rates, you have our sincere appreciation. For those of you who are no longer able to accept appointed cases as a result of the reductions, please let us know that you are removing yourself from the appointed lists by sending an email to Danielle.M.Carman@nccourts.org. Our purpose in collecting this information will be to document the impact of budget reductions on our indigent defense system and the court system as a whole, and to attempt to secure support for increased funding in the future.