

RACIAL JUSTICE ACT CLAIMS IN CAPITAL CASES
AT THE APPELLATE AND POST-CONVICTION LEVELS

IDS Policies:

The following policies govern litigation in capital cases on direct appeal and in post-conviction pursuant to the North Carolina Racial Justice Act (“RJA”), Session Law 2009-464, as amended by Session Law 2012-136. The policies are intended to ensure that RJA litigation across the State is coordinated to the extent possible, that IDS’ limited resources are maximized, and that IDS is able to provide accurate quarterly reports about RJA filings and costs to the General Assembly.

A) Expert Funding:

- 1) As with all other expert requests in capital appeals and post-conviction cases, prior approval will be required before any funding will be authorized for expert, investigative, or support services associated with a RJA claim. All requests for expert, investigative, or support services, including requests for services pursuant to the RJA, must be submitted to the IDS Office on form IDS-029 (Rev. 06/12), available at www.ncids.org.
- 2) Absent exceptional circumstances and the prior approval of the IDS Director, no expert funding will be authorized for supplemental race studies, at least until after the statewide statistical study (“the Grosso-O’Brien study”) is complete.
- 3) No funding will be authorized for mitigation specialists or investigators for work associated with the RJA unless counsel demonstrates that their special skill sets are required. Otherwise, counsel is expected to utilize the services of students (at \$10 per hour), paralegals (at \$15 per hour), and others such as Fair Trial Initiative Fellows (at no more than \$25 per hour).

B) Presumptive Maximum Guidelines for Attorney Time:

The IDS Director shall carefully review time claimed by post-conviction counsel for RJA activities and may reduce the number of hours approved if the time claimed appears to be unreasonably high. If a District Coordinator or individual attorney expects to exceed the presumptive maximum guidelines set forth below, he or she is strongly encouraged to contact the IDS Director in advance.

- 1) **District Coordinators:** District Coordinators should not expect to be compensated for more than 250 hours of RJA work in their capacity as District Coordinators. If there are multiple District Coordinators in the same district, they should not expect to be compensated for more than 250 hours of combined RJA work in their joint capacity as District Coordinators. This presumptive maximum does not include time spent by District Coordinators turning their district-specific form Motion for Appropriate Relief (“MAR”) into MARs to be filed in their own clients’ cases or time spent litigating those MARs post-filing.
- 2) **Individual Attorneys in Districts with a District Coordinator:** Individual attorneys who are appointed to represent a defendant on appeal or in post-conviction in a district with an assigned District Coordinator are expected to wait for the District Coordinator to complete his or her work before investing any substantial time in a RJA claim. Attorneys with cases in a district with an assigned District Coordinator may bill for the time associated with collecting materials that are needed for the Grosso-O’Brien study and providing them to the

Center for Death Penalty Litigation (“CDPL”). However, those attorneys should not expect to be compensated for more than 25 hours of work associated with investigating, preparing, or filing any RJA motions before the Grosso-O’Brien study is complete and their assigned District Coordinator has completed and circulated his or her district-specific form MAR.

- 3) Individual Attorneys in Districts without a District Coordinator: Individual attorneys who are appointed to represent a defendant on appeal or in post-conviction in a district with no District Coordinator should not expect to be compensated for more than 200 hours of work associated with preparing a RJA claim in a MAR. This presumptive maximum does not include time spent litigating the MAR post-filing. Attorneys with cases in a district with no District Coordinator are encouraged to consult with and share responsibilities with any other attorneys with pending cases in that district.

C) Mandatory Consultations:

- 1) Appellate and post-conviction counsel must attend a consultation with CDPL before litigating a RJA evidentiary hearing.

D) Mandatory Reporting:

- 1) Appointed counsel, appellate defenders, and capital defenders who file any post-conviction motion pursuant to the RJA, including amended motions pursuant to Session Law 2012-136, must notify IDS within 10 days of filing by completing and submitting form IDS-032 (Rev. 08/12), *available at www.ncids.org*. IDS will track the following information about all filings: the name of the defendant, the name of the attorney, the county, the type of motion filed, and the date the motion was filed.
- 2) Appointed counsel, appellate defenders, and capital defenders will be required to submit an addendum to any fee application that includes time associated with the RJA on form IDS-031 (Rev. 08/12), *available at www.ncids.org*. If counsel fails to submit that form with a fee application that includes RJA time, the fee application will be returned to counsel unpaid. Time should only be attributed to the RJA if counsel would not have done the work but for the enactment of the RJA. If counsel would have spent the same time in the investigation or preparation of a constitutional race-based claim, the time should not be attributed to the RJA.

Adoption:

Policy adopted and effective October 30, 2009; updated August 13, 2012.

Authority:

G.S. 7A-498.3(c) and (d); IDS Rules, Part 2B, Rule 2B.3(a) and Rule 2B.4(b); IDS Rules, Part 2C, Rule 2C.3(a) and Rule 2C.4(a).