

DIVISION OF RESPONSIBILITY BETWEEN TRIAL AND APPELLATE COUNSEL
WHO ARE PROCEEDING UNDER APPELLATE RULE 3.1

IDS Policy:

Under Appellate Rule 3.1(a), appellate counsel appointed by the Office of the Appellate Defender and trial counsel for an indigent respondent in an abuse/neglect/dependency or termination of parental rights proceeding have joint responsibility for preparing and serving the proposed Record on Appeal. The following policies are intended to delineate the responsibilities of the respective counsel.

Consistent with Appellate Rule 3.1, and as set forth below, trial counsel will be paid at the rate applicable for trial court representation for reasonable time and expenses associated with the work they do as part of the appellate representation.

In most cases, trial counsel will not be on the roster of counsel qualified to represent indigent persons in appellate proceedings. Trial counsel's responsibility necessarily will be subordinate to the judgment and experience of appellate counsel, even if trial counsel is on the roster of appellate counsel. Otherwise, there would be the appearance of a conflict in situations where appellate counsel must consider the possibility of raising issues concerning trial counsel's performance.

The following policies are intended to insure excellent appellate representation for indigent persons under the expedited procedures required by Appellate Rule 3.1. These policies do not place trial counsel in the role of making final decisions on the content or form of the proposed record; all substantive decisions about the proposed record will be the responsibility of appellate counsel. While appellate counsel should solicit the views and insights of trial counsel, the ultimate responsibility for decisions in all phases of the appellate representation remains with appellate counsel.

In addition to filing notice of appeal consistent with the requirements of Rule 3.1(a) when directed to do so by the client, including obtaining the client's signature on the notice of appeal, trial counsel will have the following responsibilities in connection with the appeal:

- (1) In addition to the fee application that is submitted to the trial judge for the trial-level representation in these cases, trial counsel should submit to the Office of Indigent Defense Services a fee application (on form AOC-CR-426) for work done pursuant to Appellate Rule 3.1 and the following policies.
- (2) Trial counsel must notify the Office of Parent Representation Coordinator by completing and submitting form IDS-030 ("Appeal Notification Form"), available at www.ncids.org under the Parent Representation link, following the conclusion of a hearing in which a decision adverse to the respondent has been announced by the trial court when the decision of whether to appeal is pending consideration between attorney and client, or when the client's initial inclination is to direct counsel to enter notice of appeal.

Counsel shall not delay notification to the Office of Parent Representation Coordinator on the basis that the trial court's written order has not been filed or that the client later might abandon the appeal.

- (3) At the request of the Office of Parent Representation Coordinator, trial counsel must complete a "Trial Counsel's Fact Sheet on Hearing" form and send it to the appointed appellate counsel.
- (4) Trial counsel must consult with appellate counsel at mutually convenient times concerning trial counsel's view of the potential issues in the case.
- (5) Trial counsel shall undertake all other responsibilities and tasks that trial and appellate counsel jointly determine will expedite the filing of a proposed record that constitutes a reliable basis for appellate review, including participating in activities necessary to settle the record on appeal, if requested to do so by appellate counsel.
- (6) Trial counsel shall not be responsible for the specific form and content of the proposed record on appeal, for the filing of the appellate brief, or for oral argument.

Policy effective March 1, 2006. Updated September 30, 2009.

Authority:

G.S. 7A-451(b)(6), 7A-452, 7A-458, 7A-498.3, 7A-498.5, 7A-498.8; Rule 3.1 of the North Carolina Rules of Appellate Procedure; IDS Rules 3.2(a2) (adopted Feb. 10, 2006), 3.3