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Memorandum

To: Clerks of Superior Court
From: Office of Indigent Defense Services
Re: Effect of Statute of Limitation on Judgments for Indigent Attorney Fees
Date: Updated June 8, 2011

As you are aware, G.S. 7A-458 requires the Office of Indigent Defense Services (“IDS”), a state agency, to set the fees for attorneys representing indigent defendants. G.S. 7A-455 then mandates that, in all cases resulting in a conviction of an indigent defendant, the court shall direct that a judgment in favor of IDS be entered in the office of the clerk of superior court for the money value of services rendered by the indigent defendant’s counsel.

Often, former indigent defendants do not address these judgments until many years later when either the judgment impacts a defendant’s credit or interest in property or a defendant’s state tax returns are intercepted as payment on the judgment. If more than ten years have passed since the entry of the judgment, a defendant may object on the grounds that G.S. 1-47, North Carolina’s statute of limitation, bars IDS’s enforcement of the judgment and that G.S. 1-30 has abrogated any immunity the State may have to statute of limitation defenses.

However, when performing governmental functions, the State is exempt from the running of any statute of limitation unless the pertinent statute expressly includes the State. *Rowan County Board of Educ. v. United States Gypsum Co.*, 332 N.C. 1, 9, 418 S.E.2d 648, 654 (1992). Therefore, IDS is not barred from enforcing judgments greater than ten years old or from intercepting tax returns in order to set off past debts since IDS is an entity of the State, IDS is performing a governmental function in this capacity, and the appropriate statute does not strip the State of its exemption to the statute of limitation.

In this regard, the Supreme Court of North Carolina in *Rowan County Board of Educ.* held that, despite a defendant’s argument to the contrary, G.S. 1-30 largely does not remove North Carolina’s immunity from the statute of limitation. Rather, “[i]f the function at issue is governmental, time limitations do not run against the State or its subdivisions unless the statute at issue expressly *includes* the State.” 332 N.C. at 9, 418 S.E.2d at 654. Conversely, if the function performed by the State is proprietary, G.S. 1-30 abrogates the state’s immunity unless the appropriate statute expressly *excludes* the State. *Id.*

In *Rowan County Board of Educ.*, the court went on to find that the school board's suit to recover damages for asbestos removal from certain schools constituted a governmental function, as it was incidental to constructing schools. *Id.* at 10. The court observed that "[e]ducation is a governmental function so fundamental in this state that [North Carolina's] constitution contains a separate article entitled 'Education.'" *Id.*

Likewise, the North Carolina Court of Appeals has recently held that even " 'the collection of parking fines and late fees, imposed for parking violations, is a governmental function.' " *Greensboro v. Morse*, 197 N.C. App. 624, 627, 677 S.E.2d 505, 507 (2009) (quoting *Wall v. City of Raleigh*, 121 N.C. App. 351, 354, 465 S.E.2d 551, 553 (1996)). The court found that the collection of these fines and fees is necessary in order to enforce parking regulations, which consequently makes the function governmental. *Id.*

In requiring imposition of judgments for indigent attorney's fees, G.S. 7A-455 does not expressly authorize parties to raise the statute of limitation against the State. Thus, G.S. 1-30 does not defeat claims beyond ten years as long as IDS is performing a governmental function. Collecting payment on judgments is akin to recovering damages for asbestos removal in schools and collecting parking fines and fees. Providing indigent defense is constitutionally and statutorily required of the State. In order for IDS to meet its constitutional and statutory obligations, IDS utilizes fee recoupment as a supplemental means of paying attorneys for providing representation, as required by G.S. 7A-455 and G.S. 105A-1 *et seq.* As a result, in enforcing judgments for indigent attorney's fees, IDS is performing a governmental function and is therefore immune to any statute of limitation.