

Memorandum

To: Indigent Defense Commission
Re: Indigent Defense Services Proposed Policies Governing Attorney Fee and Expense
Applications for Uniform Fee Pilot
From: Office of Indigent Defense Services
Date: Updated September 30, 2022

The below policies and procedures govern fee applications that are directed to district court judges in indigent district court criminal and non-criminal cases as provided in the attached District Court Fee Schedule developed pursuant to S.L. 2016-94

1. **Effective date.** The fee schedule pilot is effective for newly assigned cases beginning June 1, 2017. Cases in which assigned counsel was appointed prior to the effective date but which are resolved after the effective date, will be paid under the current hourly rates. The fee schedule applies to newly assigned cases including a former client with new charges but excluding an existing client with new charges. In the event an attorney who was appointed to represent a client on a case prior to the effective date is subsequently appointed to represent the client on a new charge after the effective date, assigned counsel will be paid under the hourly system for all work if all charges are resolved at the same time before the same judge. In the event that the newly assigned charge is resolved separately, assigned counsel will be compensated under the current hourly rates for the original charge and under the fee schedule for the newly assigned charge.
2. **Fee Applications.** Assigned counsel must follow all current IDS billing policies. Assigned counsel should use the same fee applications to obtain compensation under the fee schedule currently in use for affected case types. (CR-225, J-411, and G-200). Assigned counsel should continue to track and report their time on the fee applications. AOC and IDS are required to gather this information for reporting purposes. This information also will be used to determine whether the fee schedule is reasonable and whether fees should be raised in the future.
3. **Billing Time.** For all cases finally disposed in the district court where the uniform fee schedule applies, the appointed attorney must sign and submit to the judge the final fee application no later than one year after the date on which the case was disposed at that phase.
4. **Exceptional case policy.** The fee schedule is designed to cover the majority of cases resolved in district court, with the average amount of time spent on cases being fairly

compensated under the schedule. However, no fee schedule can cover the truly extraordinary case in which the amount of time reasonably necessary to provide effective representation is above what can be considered part of the average. In cases in which assigned counsel believes that the amount of time spent on a case qualifies as exceptional, assigned counsel may request that the court compensate counsel under the hourly system rather than under the fee schedule. Any fee application in which the case is compensated as exceptional must be accompanied by a detailed timesheet reflecting the work done by counsel. Although IDS will provide data on average hours to the judges as a guide in determining whether a specific case qualifies as exceptional, the decision to designate a case as exceptional and to pay counsel under the hourly system is solely within the discretion of the presiding judge

5. **Disposition of multiple charges.** All of the charges or matters that are finally disposed at the trial level on behalf of the same client before the same judge at the same time in the same court must be submitted on one fee application. Assigned counsel will be paid under the fee schedule for the most serious charge resolved.
6. **Dismissals with leave / Failures to appear.** Assigned counsel should continue to represent the client on the original charge and any related failure to appear charge, regardless of whether the client is rearrested. Assigned counsel may file a motion to withdraw and submit a fee application at the earliest of the following:
 1. the prosecutor voluntarily dismisses the charge with leave, or
 2. six months from the date of the failure to appear passes.However, in the event the client is subsequently arrested, and the charge reinstated, counsel is responsible for representing the client and may not submit an additional fee application.
7. **Deferred prosecutions.** Assigned counsel has an obligation to ensure the case is dismissed if the deferral or diversion is successful or to defend the client against the charge if the deferral or diversion fails. Absent a contrary local rule, assigned counsel may submit a fee application at the time the deferred prosecution is entered; however, assigned counsel may not file a subsequent fee application for work done if the district attorney reinstates the charges.
8. **Expenses.** Assigned counsel may still obtain reimbursement for out-of-pocket expenses under current IDS policies governing expenses for hourly cases.
9. **District Court to Superior Court.** In the event there are proceedings in superior court for a charge already disposed in district court, either through a dismissal followed by indictment or appeal for trial *de novo* in superior court, assigned counsel should file a fee application under the fee schedule for the work done in district court. In the event assigned counsel continues representation in superior court and the case is resolved in superior court, assigned counsel may bill under the hourly system for time spent on the case while pending in superior court. A case that is appealed to superior court and remanded to district court is treated as resolved in district court and the fee schedule applies.

10. **Juvenile/Child Welfare.** Assigned counsel must submit a fee application (G-200) at the end of each substantive hearing. For purposes of AND and TPR proceedings, a substantive hearing is defined as the initial adjudication and disposition, an initial review hearing, an initial permanency planning hearing, each subsequent review and/or permanency planning hearing, and a termination of parental rights hearing. The timing of fee application submission is:

1. after the initial disposition hearing,
2. after each completed review hearing,
3. after each completed permanency planning hearing, and
4. after the completion of any TPR proceeding.

Assigned counsel should not submit a fee application after a continuance.

11. **Juvenile/Delinquency.** In the event a juvenile client is transferred from the juvenile division of the district court to the superior court, assigned counsel should submit a fee application pursuant to the fee schedule for all work done in the district court. If assigned counsel continues representation of the juvenile in the superior court, assigned counsel may bill under the hourly system for time spent on the case while pending in superior court.