

EXTENSIONS AND WAIVERS OF APPOINTED ATTORNEY FEE APPLICATION DEADLINES

Introduction to IDS Rules

The following deadline applies to attorney fee applications in indigent cases:

- For all cases finally disposed at the applicable case phase (*i.e.*, trial, appeal, or post-conviction) on or after July 1, 2005, the appointed attorney must sign and submit to the judge or IDS Director the final fee application no later than one year after the date on which the case was disposed at that phase.

To mitigate the hardship that the original fee application deadline caused for some appointed attorneys, the IDS Commission revised its rules to allow the IDS Director to grant one advance extension of the applicable deadline or, if the deadline has already passed, a waiver of the applicable deadline. *See* IDS Rules 1.9(a)(1a), 2A.4(a), 2B.3(a), 2C.3(a), 3.3(b) (Rev. Aug. 13, 2007).

The following policies and procedures apply to extension and waiver requests under the revised IDS Rules. All advance extension requests pursuant to Section I. below, and all deadline waiver requests pursuant to Section II. below, must be directed to the IDS Director, even in case types where judicial officials ordinarily are responsible for setting fee awards.

Advance extension requests and deadline waiver requests must be sent to:

Office of Indigent Defense Services
Attn: IDS Director, Deadline Extension or Waiver Request
123 West Main St., Suite 400
Durham, NC 27701

IDS Policy

I. Advance Extensions of Deadlines:

In cases in which the deadline for submitting a final attorney fee application has not passed, an attorney may apply to the IDS Director for one deadline extension of no more than 30 days. The extension request must be postmarked before the deadline passes and must include a showing of good cause for the extension.

To be eligible for consideration by the IDS Director, an advance extension request must be submitted on an IDS Fee Deadline Extension Form (form IDS-018), *available at* www.ncids.org under the “Forms & Applications” link. The IDS Director shall approve or deny an advance extension request in writing within 10 days of receipt.

If the IDS Director grants an extension, the appointed attorney must then submit his or her fee application within the extended deadline 1) to the presiding judge in a non-capital or non-criminal case at the trial level, or 2) to the IDS Director in a potentially capital case at the trial level, a capital or non-capital appeal, or a capital post-conviction case. The appointed attorney must attach the IDS Deadline Extension Form, approved by the IDS Director, to the fee application that he or she submits. The presiding judge or IDS Director, as applicable, will then set the fee award and forward the fee application and approved Deadline Extension Form to IDS Financial Services for payment.

An attorney who applies for a deadline extension is not eligible to apply for a waiver of the deadline pursuant to Section II., below.

II. Waivers of Deadlines:

An attorney who does not submit a final attorney fee application within the deadline and has not requested a deadline extension pursuant to Section I., above, may apply for a waiver in the following circumstances. If the IDS Director grants the waiver request, the IDS Director will determine and set fees as provided in II.C., below, even in case types where judicial officials ordinarily are responsible for setting fees.

A. Cases Where the Deadline Passes After the Effective Date of this Policy:

If the attorney did not submit a timely fee application for work performed in a case where the one-year deadline passes after August 13, 2007, he or she may apply to the IDS Director for a waiver of the deadline and for approval of fees for attorney time. Out-of-pocket expenses are not eligible for reimbursement. The request must be postmarked within 90 days after the one-year deadline passes. The waiver request must include a showing of good cause that prevented submission of the fee application within the one-year deadline. Unawareness of the one-year deadline due to attorney neglect shall not constitute good cause.

B. Procedures for Applying for Waiver:

To be eligible for consideration by the IDS Director, a deadline waiver request must include all of the following:

- 1) The completed fee application form for the type of case involved;
- 2) Itemized time sheets with sufficient detail regarding counsel's services in the case to demonstrate that the claim for compensation is reasonable. At a minimum, the itemization must reflect attorney time broken down according to date, description of services, and amount of time in tenths of an hour; and
- 3) A completed IDS Fee Deadline Waiver Form (form IDS-019), *available at www.ncids.org* under the "Forms & Applications" link.

C. Award of Fees:

The IDS Director shall approve or deny a deadline waiver request in writing within 30 days of receipt. If the IDS Director grants a waiver, the IDS Director will determine the amount of the fee and set the award. In determining the amount of the fee, the Director will: 1) review the amount of time claimed by the attorney and approve an appropriate amount of time based on the factors normally considered in fixing attorneys' fees and any data available to the Director on the average time claimed in that type of case; 2) multiply the hours approved by the standard hourly rate in effect at the time the work was performed; and 3) reduce the amount of the award by up to 10% for each partial or full month that the original submission was past the deadline, but no more than 30%. If the district where the case originated employs a flat fee schedule that has been pre-approved by the IDS Director pursuant to IDS Rule 1.9(a)(5), the IDS Director will reduce the amount of the flat fee award by up to 10% for each partial or full month that the original submission was past the deadline, but no more than 30%. The IDS Director will then forward the fee application, supporting time sheets, and approved Deadline Waiver Form to IDS Financial Services for payment.

III. No Right to Review:

There is no right to review of the IDS Director's decision to grant or deny an extension or waiver request or, in cases in which the Director grants a waiver and sets a fee, to review of the amount of the fee.

IV. Exceptional Circumstances:

Upon recommendation of the IDS Director and a showing of exceptional circumstances, the IDS Commission may grant relief in addition to that specifically permitted under this policy.

V. No Authority to Review Fee Set by Judicial Official:

Nothing in this policy confers on the IDS Director or the IDS Commission authority to review the amount of any fee award set by a judicial official pursuant to Part 1 of the IDS Rules on a fee application that an attorney submitted to the judicial official before the expiration of the applicable deadline or within an extended deadline approved under Section I., above.

VI. Recoupment:

In recoupment eligible criminal cases, the IDS Director or his or her designee shall determine whether the presiding judge ordered repayment of attorney fees through probation or whether the presiding judge ordered a civil judgment on a fee application that has been voided because it was submitted after the applicable deadline. If neither has occurred, the IDS Director or his or her designee shall notify the indigent client in writing of the amount of the fee award and mail a written request for entry of a civil judgment to the presiding judge.

VII. Questions:

If you have questions about this policy, please contact:

- Mary S. Pollard, IDS Executive Director, at Mary.S.Pollard@nccourts.org; or
- Chad E. Boykin, Financial Services Staff Attorney, at Chadwick.E.Boykin@nccourts.org; or
- Whitney B. Fairbanks, IDS Assistant Director, at Whitney.B.Fairbanks@nccourts.org or (919) 354-7200.

Policy effective August 13, 2007; updated October 18, 2012.

Authority:

G.S. 7A-498.3(c) and (d); 7A-498.5(f).