

# Adverse Decision of Executive Director and Procedures for Review

## A. Policy Statement

To fulfill its obligation to oversee the delivery of counsel and related services provided at State expense it the policy of the Commission on Indigent Defense Services that, if the IDS Director determines it necessary for the continued delivery of quality services in the most efficient and cost-effective manner, the Director may:

1. deny an attorney or expert roster application,
2. remove an attorney or expert from a roster,
3. revoke or suspend attorney or expert payment eligibility, and/ or
4. deny or reduce an attorney's or expert's application for payment.

## B. Review Committee Established

The Chair of the IDS Commission shall appoint at least four members of the Commission to serve on the Review Committee. Members of the committee shall serve between six (6) and twelve (12) consecutive months, at the pleasure of the Chair.

Two members of the committee shall constitute a quorum. A majority vote of the committee members present is required to reverse or modify a decision of the IDS Director. Any committee member may recuse himself or herself from a decision in a particular case if, in the judgment of that committee member, his or her participation would be inappropriate.

## C. Scope of Director's Authority

1. The Director may deny an application to an attorney or expert roster or remove an attorney or expert from a roster for any of the following reasons:
  - a. a determination based on review of the initial application or current performance that the attorney or expert lacks required knowledge and skill necessary for inclusion on that roster;
  - b. a determination as the result of a periodic review of the roster, that a smaller roster will better serve the goals of ensuring the best possible representation and of delivering quality services in the most efficient and cost-effective manner.
2. The IDS Director may revoke or suspend a person's eligibility to receive payment in appointed cases for any of the following reasons:
  - a. public discipline of any level issued by the Grievance Committee of the State Bar or the Disciplinary Hearing Commission; and/or
  - b. a judicial finding of misconduct or ineffective assistance of counsel; and/or
  - c. a formal admission by counsel of ineffective assistance of counsel; and/or

- d. the filing of criminal charges if the Director determines the charges are of a type that may undermine appointed counsel's ability to provide indigent persons with quality representation while these charges are pending; and/ or
    - e. reasonable concerns about the appropriateness and accuracy of the persons billing.
  3. The Director may reduce or deny a fee and expense award.

## **D. Procedure**

### **1. Notice of Adverse Decision**

The Director shall provide written notice of any adverse decision made pursuant to this policy. The notice shall be sent via first class mail within ten (10) days of the decision and shall include a statement summarizing the basis for the decision and a copy of this policy and review procedure.

### **2. Review of Adverse Decision by Director by Review Committee**

Any person subject to an adverse decision made pursuant to this policy may request review of that decision by the Review Committee by submitting a request in writing addressed to the Director and post-marked no later than thirty (30) days after the notice of an adverse decision. The request for review shall not stay the action which is the subject of the review.

The person requesting review may submit written materials for consideration by the Review Committee. The IDS Director shall provide to the Review Committee all materials submitted by the person, the written statement summarizing the basis of the adverse decision, and any other materials the IDS Director believes will aid the Committee in its review. If the review is from the denial of a roster application, the IDS Director shall also provide to the Review Committee a copy of the person's application file.

The Review Committee shall reach a decision within no more than forty-five (45) days after receipt of the written request for review. The Chair of the Review Committee shall promptly notify the person of the result of the review by letter.

The Review Committee may reverse, modify, or uphold the Director's decision.

### **3. Review of Adverse Decision by Director by IDS Commission**

In any case where the Review Committee upholds the Directors decision, but the Review Committee's decision is not unanimous, the person may request review by the IDS Commission. The request must be submitted in writing addressed to the Director and post-marked no later than thirty (30) days after the Review Committee's notice. The request for review shall not stay the action which is the subject of the review.

The person requesting review may submit additional written materials for consideration by the Commission. The Director shall provide to the Commission all materials submitted by the person, the Director's notice and the written statement summarizing the basis of the adverse decision, the Review Committee's notice, and any other materials the Director believes will

aid the Commission in its review. If the review is from the denial of a roster application, the IDS Director shall also provide to the Review Committee a copy of the person's application file.

The Commission shall consider the request for review at the next regularly scheduled Commission meeting unless the Commissioners have not had adequate time from the date of the Review Committee's decision to review all materials relevant to its decision. A majority of the Commissioners present is required to reverse the decision of the Review Committee. The Director shall promptly notify the person of the result of the review by letter.

The Review Committee may reverse, modify, or uphold the Director's decision.

#### 4. Exceptions

Review by the Review Committee of the Director's decision to deny or reduce a fee award may only be requested if the decision:

- a. reduces the fee award more than five hundred dollars (\$500) of the standard hourly fee for services for the number of hours claimed; or
- b. results in a fee award that is below the hourly fee schedule set by the IDS Commission for the number of hours claimed; or
- c. in a potentially capital case at the trial level that has not been declared exceptional pursuant to IDS' "Exceptional Capital Cases" policy, reduces an attorney's pre-trial fee and expense claim that exceeds \$35,000 by more than 10%; or
- d. reduces an expert fee below the fee claimed; or
- e. denies or reduces a claimed expense.

There will be no review of the Director's decision to reduce a fee award when the reduction is a result of a general and uniformly applied reduction in fees ordered by the Commission or the expert fee requested exceeds the amount authorized by a Court or the IDS Office, and the IDS Office has paid up to the amount authorized.

The Review Committee may reverse, modify, or uphold the Director's decision, but may not reduce the fee or expense award below the amount set by the Director. The Review Committee shall notify the applicant by letter of the result of its review. The decision of the Review Committee shall be final, with no further review by the Commission.

The review shall not delay payment of the fee in the amount the IDS Director has approved.

## **E. Applicable Standards of Review by the Review Committee and Commission**

<b>Adverse Decision</b>	<b>Standard of Review</b>
Roster denial/ removal – lack of qualification	Full satisfaction that the person is in fact qualified for the roster in question, has the required knowledge and skill necessary for inclusion on that roster, and will apply that knowledge and skill with appropriate thoroughness and preparation.
Roster denial/ removal – roster maintenance	Full satisfaction that the Director’s decision was arbitrary, capricious, or an abuse of discretion.
Revocation/ suspension of eligibility to receive payment	Full satisfaction that the person has the required knowledge and skill necessary for inclusion on that roster; will apply that knowledge and skill with appropriate thoroughness and preparation; <u>and</u> revocation or suspension is unnecessary to ensure clients receive quality representation <u>and</u> IDS receives appropriate and accurate billing.
Denial/ reduction of fee award	Full satisfaction that the fee set by the Director should be modified.

## **F. Distribution of Procedures:**

The adopted review procedures and any subsequent changes shall be published on the IDS web site and distributed to all parties who are subject to an adverse decision pursuant to this policy.

## **G. Notes**

Whenever the term IDS Director is used in these procedures, it refers to the IDS Director or his or her designee.

For policy history, including revisions log, see “Attachment A – Policy History.”

## **H. Statutory Authority**

G.S. 7A-498.1

### Attachment A – Policy History

<b>Policy Name:</b>	<b>Adverse Decision of Executive Director and Procedures for Review</b>
<b>Policy Number:</b>	<b>04.01.07</b>
<b>Custodian:</b>	<b>Deputy Director and General Counsel</b>
<b>Effective Date:</b>	<b>2022.07.15</b>
<b>Next Review Date:</b>	<b>2027.07.01, unless reviewed earlier</b>
<b>Location:</b>	<a href="#"><u>Section 4: Discipline and Adverse Decisions - Indigent Defense Services (ncids.org)</u></a>
<b>Revision History</b>	Policy adopted November 16, 2001; amended February 10, 2006, January 1, 2009, and December 15, 2017. New Section 3. adopted effective September 25, 2015; amended effective March 2, 2018. Amended July 15, 2022.