

Office of Indigent Defense Services

Managed Assigned Counsel – Policies

A. Policy Statement

The following policies govern payment of counsel fees in indigent non-capital criminal and non-criminal cases at the trial level where the indigent defendant or respondent was represented by counsel under the Managed Assigned Counsel (“MAC”) program.¹

The IDS Director may supplement or amend these policies as needed.

Whenever the term “IDS Director” is used in these rules and appendix, it means the Director of the Office of Indigent Defense Services or her/his designee. Whenever the term “IDS Office” is used in these rules and appendix, it means the Office of Indigent Defense Services or its designee. “IDS Commission” is used in these rules and appendices, it means the Commission on Indigent Defense Services or its designee.

B. General

1. **Effective Date.** MAC is effective for newly assigned cases beginning December 1, 2022.
2. **Cases Coverage.** Cases in which assigned counsel was appointed prior to December 1, 2022, will be paid pursuant to the Contract in effect at the time of assignment.
 - a. In the event a client to whom a contracting attorney was appointed prior to effective date of their current contract is charged with new, additional offenses after effective date of the current contract, only the attorneys work on the new, additional will be pursuant to the MAC contract.
 - b. In the event a client to whom a contracting attorney was appointed prior to effective date of their current contract is charged with new, additional offenses after effective date of the current contract and the clients new and old charges are disposed together in a single session of court the attorney should report all work on done after the effective date of the MAC contract, including work done on the pre-MAC charges, in the MAC contract.
 - c. If the court reappoints an attorney who was allowed to withdraw from representation of a client who failed to appear, the appointment shall be considered a new appointment and all work done on the cases after the date of the new appointment shall be pursuant to the MAC program.
3. **Counties Covered.**
 - a. Adult Criminal – Alamance, Caswell, Chatham, Durham, Franklin, Granville, Greene, Harnett, Johnson, Lee, Lenoir, Orange, Person, Pitt, Vance, Wake, Warren, Wayne
 - b. Juvenile Defense (JB) – Alexander, Buncombe, Cumberland, Forsyth, Guilford, Harnett, Iredell

¹ Adopted by the Office of Indigent Defense Services pursuant to N.C.G.S. 7A-454, G.S. 7A-458, and G.S. 7A-498.3(c).

4. **Case Types Covered.** Adult Criminal Cases (Misdemeanor, Low-Level Felony, and High-Level Felony); Juvenile Delinquency Cases (Felony, Misdemeanor, and Chapter 5A Contempt Cases); Treatment Court Cases; Other Per Session Court Cases in District Court. *See Attachment B, "Rosters."*
 - a. Specialization. Depending on the caseload in each county, as well as the number and quality of applications that IDS receives, contractors may be permitted to specialize within contract categories.

C. Application and approval process

1. **Approval Process.** IDS is responsible for determining the eligibility of attorneys for appointment to cases under this program.
 - a. Current Contractors. All current contractors in good standing will be offered new MAC contracts in the counties and for the case types for which they currently contract. Attorneys who do not currently have a contract with IDS or who have a contract but wish to change or add a county or case type must apply for the contract using an application process approved by IDS as prescribed in Section C.1.b.
 - b. New Contractors. New contractors must complete an approved online application to be considered for a contract. Qualifications for a contract will be based on the requirements of the Uniform Appointment Plan. Availability of contract work for qualified attorneys depends on current demand in the case type or county for which the attorney applied. A new contractor is an attorney who either does not currently have a contract with IDS or has a contract but wishes to add a new case type or county.
2. **Evaluation and Criteria.** IDS will conduct a formal review of applications for contract slots in January and September of each calendar year. Applicants who meet the qualification standards for the relevant roster(s) will either (1) be added to the roster as soon as a contract is executed; or, (2) be added to the wait list. IDS may also fill openings as they arise.

The IDS Director shall be the sole determiner of the number of unique attorneys necessary to ensure the best possible representation and deliver quality services in the most efficient and cost-effective manner in a covered district.

Except as allowed in Section C.1.a. above, IDS will evaluate applications and determine whether the applicant has the required qualifications and experience to be placed on the requested roster. In addition to the qualifications for a specific roster, an attorney must, at a minimum, demonstrate that they,

- a. are licensed to practice law in North Carolina;
- b. have a confidential place in which to meet clients and will be available for meetings on a reasonable basis;

- c. have a reliable means of communication, including a telephone number with the capability for callers to leave voice messages, and a valid email address and that contact information is available to clients; and
- d. will make themselves available to the courts for scheduled court appearances.

IDS may request an applicant submit additional information. IDS may discuss requests with other key stakeholders and interview and/or observe applicants at their discretion. IDS may place an application on hold while obtaining additional information.

3. **Waiver of Specific Criteria.** Any applicant who does not meet the baseline requirements may seek a waiver for consideration. IDS may contract with applicants who do not meet the baseline requirements on the condition that they work within a time certain to meet the requirements they lack. While an applicant's ability to meet all criteria is material to the evaluation, IDS may elect to waive specific criteria and impose additional contractual requirements., This may include but is not limited to attendance at specialized training and consultation with a senior attorney named by IDS before proceeding to trial in a case.
5. **Awards.** Attorneys with existing contracts for other rosters and the ability to take on more contract work will be given priority, after which IDS will fill any unmet need by awarding contracts on a first come, first served basis to qualified applicants.
6. **Requests for Review.** Requests for review of decisions denying placement of an attorney on a particular roster or removing an attorney from a roster should be pursuant to the procedures specified by IDS policy on Review of Decisions of the IDS Director, posted on the IDS website at <https://www.ncids.org/wp-content/uploads/2017/12/ReviewRule.pdf>.

D. Attorney Rosters

The IDS Director shall maintain rosters of attorneys with whom IDS has contracted for service. IDS shall prepare the "Appointment Lists" and provide them electronically to the Clerk of Superior Court or Public Defender for assignment of counsel. The rosters shall be designated by county and case type. Rosters are public records.

1. **The Appointment Lists: Rotation and Case Loads.** Appointment Lists shall include the names of all unique contract attorneys presently taking assignments designated by case type. A contract attorney's name may appear multiple times in an Appointment List to balance caseloads, minimize the risk of excessive caseloads, and accommodate requests for leave.

If the court determines that a person is entitled to counsel, the court or Public Defender shall assign an attorney from the appropriate roster. The court should assign attorneys in a strict rotation in the sequence in which the attorneys appear on the relevant roster as provided for in Section E of these policies.

In the event there is no available attorney on a roster, the court or the Public Defender shall contact IDS and IDS shall assist in identifying counsel, by first consulting Roster B.

2. **Roster Maintenance.** IDS will conduct twice yearly reviews of the rosters. IDS may conduct an interim review of a specific roster if, in the IDS Director’s discretion, it determines that an earlier review is necessary. Following each review, whether regularly scheduled or interim, IDS may increase or decrease the number of attorneys on a roster.
- a. Increases in Number of Attorneys. If IDS determines that more attorneys are needed on a roster, qualified attorneys with existing contracts for other rosters will be given priority. In determining whether an existing contract attorney should be given priority, IDS will consider the attorneys existing contractual obligation. Secondary to considering current contract attorneys, IDS will fill any unmet need by awarding contracts on a first come, first served basis to qualified attorneys on the wait list.
 - b. Decreases in Number of Attorneys. IDS will take steps to reduce the number of attorneys on a roster whenever it determines that a reduction is necessary to ensure the best possible representation and deliver quality services in the most efficient and cost-effective manner.
 - c. Director’s Discretion. Nothing in this section shall preclude the IDS Director from adding an attorney(s) to a roster from time-to-time, with or without formal review, if, in the Director’s discretion, additional attorneys are necessary to ensure the best possible representation and to deliver quality services in the most efficient and cost-effective manner.

2. **Removal from Roster:** Temporary and Permanent

- a. Voluntary Temporary Removal (“Pause”). An attorney who wishes to have his or her name temporarily removed from a roster, shall notify the Clerk or Public Defender and the Clerk or Public Defender shall remove the attorney’s name from the roster. A temporary removal is not a termination of the contract. The Clerk shall add the attorney’s name to the roster when requested to do so by the attorney. For purposes of this section, a temporary pause in assignments is one where the attorney expects to be off the list for seven (7) or fewer days.
- b. Voluntary Extended Removal. An attorney who wishes to have his or her name removed from a roster for more than seven (7) days, must notify the IDS Contracts Administrator and their Regional Defender.
- c. Voluntary Permanent Removal. An attorney who wishes to have his or her name permanently removed from a roster shall file a written request with IDS, and IDS shall remove the attorney’s name from the roster and notify the court and any other interested parties. A permanent removal is a termination of the contract and an attorney who asks to be permanently removed from a roster must reapply for a new contract if he or she wishes to resume assignments.

Voluntary permanent removal will not result in the attorney being automatically removed from cases to which he or she already has been appointed.

- d. Involuntary Removal/ Suspension. The Director may remove or suspend an attorney from a roster as allowed by Policy # 04.01.07, “Adverse Decision of Executive Director and Procedures for Review.”

Involuntary permanent removal will not result in the attorney being automatically removed from cases to which he or she already has been appointed; however, the IDS Director may direct the attorney to withdraw from some or all cases to which he or she already has been appointed.

Requests for review of a decision to remove an attorney from a roster should be pursuant to the procedures specified by IDS policy on Review of Decisions of the IDS Director, posted on the IDS website at <https://www.ncids.org/wp-content/uploads/2017/12/ReviewRule.pdf>.

E. Appointment of Counsel.

If the court determines that a person is entitled to counsel, the court shall assign an attorney from the appropriate roster. The court should assign attorneys in a strict rotation in the sequence in which they appear on the relevant roster. If the court passes over an attorney for a reason other than unavailability, the court should return to that attorney for the next appointment to the extent administratively feasible.

1. **Single Client/ Multiple Simultaneous Charges.** The court should seek to appoint the same attorney on all pending matters concerning a defendant or respondent.
2. **Single Client/ Subsequent Charges.**
 - a. **Former Client.** If new charges are brought against a former client after disposition of previous charges, there shall be no presumption that the attorney who represented the defendant on the previous charges should be appointed to represent that defendant on the new charges.
 - b. **Current Client.** If an attorney is appointed to represent a client on one matter, and the client is later charged with offenses of a higher case type for which the attorney does not have a contract, the client should be appointed to any attorney who does have a contract with that case type. The first and second attorney should confer as to whether the first attorney should withdraw.

F. Payment and Reimbursement for Expenses.

IDS will pay the Contractor monthly for work done the previous month. Payment will be at the current private assigned counsel hourly rate in effect for the most serious charge on the date of disposition.

1. **Payment.** IDS will pay all MAC attorneys monthly. MAC attorneys shall submit to the IDS Director an application for payment in a form prescribed by the IDS Director, showing the time counsel spent in representation of the client. Following review of the application, the IDS Director shall determine the amount of compensation and forward the award to IDS Financial Services for payment.
 - a. **Expenses.** IDS will reimburse assigned counsel for out-of-pocket expenses documented in compliance with MAC Data Reporting Requirements in accordance with the monthly payment schedule and consistent with IDS Billing Policies.

- b. Experts. Compensation under the MAC does not include amounts for payment of an expert witness or other necessary expenses of counsel approved by the court pursuant to G.S. 7A-454. Assigned counsel should continue to use the AOC-G-309 to obtain authorization for expert expenses from a presiding judicial official and experts should continue to use the AOC-G-309 to request payment for services.
 - c. Out-of-County Appointments. Attorney may only enter assignments and bill in the MAC for cases in the counties in which and for the case types for which the contract attorney has a contract.
 - i. Exception. If IDS asks a contract attorney to take an appointment for a client with a charge in the same contract type or lower in a county that is covered by the MAC program but in which the contract attorney does not have a contract, the contract attorney may enter that appointment and bill for it under the MAC contract.
2. **Recoupment of Fees**. To the extent required by law, clients for whom counsel has been appointed under the MAC shall continue to be responsible for repaying the fees paid to counsel. After the IDS Director sets the fee to be paid for the value of services rendered, the IDS Director shall notify the client of the potential liability and advise the client of the opportunity to be heard on the reasonableness of the fees by a judicial official. The trial judge or other appropriate judicial official shall then determine the amount to be recouped if recoupment is required by law.
3. **Reporting Obligations**. Contractors shall report complete and timely data about work done on each assigned contract case in a format and manner required by IDS. Within seven (7) calendar days of the end of each month, Contractor shall complete all required data fields in the Contractor Case Reporting System for all work done in each assigned case during the prior month. The Contractor shall certify that all required data has been entered into the system and submit for monthly payment.
- a. Penalties. Failure to timely report hours and expenses will result in IDS imposing a penalty of 30% of the total billing for the month in which the data are received.
4. **Review of Director's Decision**. Counsel may make a written request for a review of the amount of compensation approved by the IDS Director to the Review Committee. Review is subject to Policy # 04.01.07, "Adverse Decision of Executive Director and Procedures for Review."

G. Performance Standards.

MAC attorneys are expected to provide quality representation for all appointed clients. In any case where the assigned MAC attorney determines there is a potentially meritorious claim to raise or a valid and ethical action to take on behalf of a client then IDS Policy # 03.01.05, "Scope of Representation," applies.

In conjunction with any standard(s) or guideline(s) specific to a case type for which a MAC attorney and IDS have contracted, MAC attorneys must:

- 1. maintain regular contact with clients and keep them fully informed as to the status of their cases.

2. appear on clients' court dates, absent justifiable excuse (e.g., illness, jury trial, etc.). If scheduling conflicts arise, an attorney should resolve them in accordance with Rule 3.1 of the General Rules of Practice.
3. report a North Carolina State Bar complaint that has been lodged against them to IDS, in writing, within five (5) days of the attorney's answer to the complaint and inform IDS, in writing, of the results of any North Carolina State Bar disciplinary action.
4. not receive anything of value from anyone in connection with representation under these regulations during the period of representation, except as permitted by IDS Rule 1.9(e).
5. visit incarcerated clients within three (3) business days after notification of appointment, absent justifiable excuse. If necessary, counsel may arrange for a designee to conduct the initial interview.
6. advise clients on a timely basis of the right to appeal, either for trial de novo or to the appropriate appellate court and, if the client elects to appeal, enter notice of appeal for the client. If notice of appeal is to the Superior court, the attorney shall continue his or her representation of the client in Superior court. If notice of appeal is to the appellate courts, the attorney shall assist the defendant in applying for assistance of appellate counsel.
7. provide competent representation of clients.
8. adhere to the Rules of Professional Conduct of the North Carolina State Bar.

Failure to meet minimum standards of representation as set forth above may lead to the removal of the attorney from the appointment rosters.

Attachment A – Policy History

Policy Name:	Managed Assigned Counsel
Policy Number:	05.01.01
Custodian:	Deputy Director and General Counsel
Effective Date:	2022.12.01
Next Review Date:	2027.12.01, unless reviewed earlier
Location:	
Revision History	Policy adopted December 1, 2022

Attachment B – Rosters

1. Adult Misdemeanor Cases

- A. **Cases Covered.** Adult misdemeanor cases include all cases at the trial level where the client is an indigent adult or a juvenile who was previously transferred to Superior court for trial as an adult. Misdemeanor charges may include trial de novo in the superior court if the client exercises his or her right to a jury trial.

Most serious original charge:

- misdemeanor non-traffic,
- misdemeanor traffic,
- driving while impaired (“DWI”) or habitual DWI,
- habitual assault,
- extradition,
- probation violation in District Court,
- criminal or civil contempt in District Court (only if it arises in a criminal case or involves contempt of a parent in a juvenile delinquency case),
- contempt before the Post-Release Supervision and Parole Commission,
- Class 3 misdemeanor offenses allegedly committed on or after December 1, 2013 where the Court has not found that the defendant has more than three prior convictions, but the defendant is in custody and the Court appoints counsel for the limited purpose of ensuring that the defendant has meaningful access to the courts during the time period of the defendant’s confinement on the Class 3 misdemeanor charge.

Representation in a misdemeanor case may be in District or Superior court and representation in a misdemeanor appeal.

B. Requirements.

1. licensed to practice law for at least one (1) year;
 2. demonstrate that a significant portion of the applicant’s practice is or is intended to be criminal law;
 3. certify that he or she has observed at least one (1) district court session and one (1) district court bench trial in the county; and
 4. demonstrate that he or she has the required legal knowledge and skill necessary to represent clients in misdemeanor cases and that he or she will apply that knowledge and skill with appropriate thoroughness and preparation.
- C. **Waivers.** If the applicant has been licensed to practice law for less than one (1) year, he or she will be required to participate in a mentorship program for one (1) year, if reasonably available. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in criminal law within the past year.

2. Adult Low-Level Felony Cases. (Felonies E through I and Felony Probation Violations)

- A. **Cases Covered.** Adult low-level felony cases include all cases at the trial level where the client is an indigent adult or a juvenile who was previously transferred to Superior court for trial as an adult.

Most serious charge:

- felonies from classes F through I, and
- felony probation violations in District and Superior court.

B. **Requirements.**

1. licensed to practice law for at least two (2) years;
2. demonstrate that he or she has the required legal knowledge and skill necessary for representation in felony cases and will apply that knowledge and skill with appropriate thoroughness and preparation
3. demonstrate that he or she is competent to try a Superior court case before a jury and otherwise can handle felony cases in Superior court; and
4. certify that he or she has tried as lead or co-counsel at least two (2) jury trials to verdict

Waivers. As an alternative to jury trial experience, the applicant may show completion of at least twelve (12) hours of continuing legal education in criminal jury trials and have previously served as second chair on a jury trial or have a second chair, if reasonably available, selected by the Regional Defender assist with the attorney's first trial.

3. **Adult High-Level Felony Cases.** (Felonies A to D)

- A. **Cases Covered.** Adult high-level felony cases include all cases at the trial level where the client is an indigent adult or a juvenile who was previously transferred to Superior court for trial as an adult.

Most serious charge:

- felonies from class B1 to E.

B. **Requirements.**

1. licensed to practice law and have recent, consistent practice in adult criminal law for at least three (3) years;
2. demonstrate that he or she has the required legal knowledge and skill necessary for representation in serious felony cases in Superior court and will apply that knowledge and skill with appropriate thoroughness and preparation
3. certify that he or she has tried at least three (3) jury trials to verdict, at least one of which involved a charge covered by this roster

- C. **Waivers.** As an alternative to jury trial experience, the applicant may show that he or she previously served as second chair on a jury trial of such a charge or have a second chair, if reasonably available, selected by the Regional Defender assist with the attorney's first trial of such a charge.

D. **Continuing Obligations.** To remain on Roster 3, the applicant must certify every three (3) years that he or she has attended at least nine (9) hours of continuing legal education relevant to representation of high-level felonies.

4. **Juvenile Class A1-3 Misdemeanors, Class H-I Felonies, Probation Violations, and Motions for Contempt**

A. **Cases Covered.** Attorneys on this Roster will represent juveniles in the juvenile division of the district court alleged to be delinquent.

Most serious charge:

- class A1-3 misdemeanors,
- class H-I felonies,
- probation violations, and
- motions for contempt in the juvenile courts.

An attorney on this roster may continue to represent a juvenile if the juvenile's case is transferred to superior court if the attorney is qualified by IDS to represent adults in that class of felony case in superior court, subject to the second-chair requirements for that roster.

If the attorney is not qualified by IDS to represent adults in that class of felony case in superior court or wishes not to represent the juvenile in Superior court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

B. **Requirements.**

1. certify that he or she:
 - a. has read and is familiar with the Juvenile Code and the local rules governing juvenile court in the county or judicial district;
 - b. has shadowed an attorney who is currently on the roster for two (2) court sessions;
 - c. has spent no less than one (1) hour becoming familiar with the practices and procedures of the court counselor in the county or district and has met with its Chief Court Counselor(s);
 - d. is familiar with the of the Juvenile Defender and has subscribed to the blog and listserv; and
 - e. will confer with the director of the nearest juvenile detention facility, or the director's designee, in person or by telephone and become familiar with detention center policies and procedures within one year of being admitted to the roster.

C. **Continuing Obligations.** complete at least six (6) hours of approved juvenile delinquency training within the first two (2) years of admission to the roster, preferably with three (3) hours in the first year and must thereafter complete at least three (3) hours of approved juvenile delinquency training or such other comparable training as allowed by IDS every two (2) years.

5. Juvenile Class A-G Felonies

A. Cases Covered. Attorneys on this roster will represent juveniles in the juvenile division of the district court alleged to be delinquent.

Most serious charge:

- List 4 cases, and
- class A-G felonies.

An attorney on this roster may continue to represent a juvenile if the juvenile's case is transferred to superior court if the attorney is qualified by IDS to represent adults in that class of felony case in Superior court, subject to the second-chair requirements for that roster.

If the attorney is not qualified by IDS to represent adults in that class of felony case in superior court or wishes not to represent the juvenile in superior court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

B. Requirements.

1. recently practiced in juvenile delinquency or adult criminal superior court on a consistent basis for at least three (3) years; and
2. certify that he or she has successfully completed all the requirements of Roster 4.

C. Continuing Obligations. To remain on the roster, an attorney must complete at least three (3) hours of approved juvenile delinquency training as defined above in Roster 4A, or other comparable training, every two (2) years of practice on this roster.

6. Abuse/Neglect/Dependency and Termination of Parental Rights Cases (Respondent Attorney).

A. Cases Covered. Attorneys on this roster will represent parents in proceedings involving abuse, neglect, and dependency, and termination of parental rights and will act as Rule 17 Guardians ad Litem for respondent parents

B. Requirements.

1. familiarity with the relevant specialized area of law;
2. demonstrate that he or she has the required legal knowledge and skill necessary for representation in the cases in this category and will apply that knowledge and skill with appropriate thoroughness and preparation; and
3. certify that
 - a. he or she has read and is familiar with the Section 7B-100 through 7B-1112 of the North Carolina General Statutes and any local rules governing abuse, neglect, and dependency court in the county or judicial district;
 - b. he or she has observed one (1) non-secure custody hearing, one (1) contested adjudication/disposition hearing; one (1) review hearing; one (1) permanency planning

hearing; and, if possible, one (1) contested termination of parental rights hearing in the county;

- c. he or she has attended at least three (3) hours of continuing legal education in parental rights law within the past year, if such training is reasonably available.
- C. **Continuing Obligations.** To remain on this roster the applicant must complete at least three (3) hours of continuing legal education relevant to representation of parents in abuse, neglect, dependency and termination of parental rights every two (2) years of practice on this roster