

CONTRACT FOR INDIGENT REPRESENTATION

MAC # IDS/OPD/OJD/OSC FY1-FY2-Last Name_First Name_County

This agreement is entered into by and between the North Carolina Office of Indigent Defense Services (hereinafter "IDS"), an agency in the Judicial Branch of the State of North Carolina, and the attorney or law firm listed below (hereinafter "Contractor"). This agreement is to provide for a contract pursuant to North Carolina G.S. 7A-498.5(d) for the stated time between IDS and the Contractor for legal services to provide competent legal representation for indigent clients who have a right to counsel under N.C.G.S. 7A-451 and appearing in courts in the County(ies) listed below.

Contractor (Attorney or Law Firm): _____
Designated Attorney(s): _____
County(ies): _____
Contract Type(s): _____

Therefore, in consideration of the premises and considerations set forth herein, IDS and the Contractor do mutually agree as follows:

- A. **Definitions.** The following definitions control the interpretation of this contract:
1. **Office of Indigent Defense Services ("IDS").** IDS includes all authorized agents, employees, representatives, and designees of IDS.
 2. **IDS Director.** IDS Director includes the Director and the Director's designee.
 3. **Contractor.** Contractor is the individual attorney, law firm, or non-profit organization that has entered this contract with IDS.
 4. **Client.** A client is a person whom a state court has determined to be entitled to appointed counsel at state expense pursuant to the United States Constitution, North Carolina Constitution, and/or North Carolina General Statutes.
 5. **Assignment.** An assignment is the appointment of Contractor to represent a specific eligible client in any matter under the terms of this contract. If Contractor is a law firm or non-profit with multiple named attorneys, an assignment to a specific case will be to an individual attorney named in this contract, not the law firm or non-profit.
- B. **Terms and Conditions.**
1. The term of this contract is ____ __, 20__ through __ __, 20__; provided, however, that either party may terminate this agreement upon giving the other party thirty (30) days' written notice.
 2. Additional provisions specific to this contract contained in appendices are incorporated into this contract.
 3. During the term of contract, the Contractor shall accept appointments as assigned by

the Court in accordance with the order in the appointment lists as maintained by IDS and provided to the Court.

4. IDS will pay the Contractor monthly at the current private assigned counsel hourly rate for each category of cases under this agreement pursuant to Paragraph C below.
5. The Contractor shall maintain full and exclusive responsibility and authority for the conduct of representation of clients. Nothing in this agreement shall be construed as derogating from the attorney-client relationship or giving IDS authority to control or influence the Contractor in the exercise of professional judgment in representation of clients under this agreement, except that the Contractor is subject to the qualifications, performance standards, and other provisions of the "[Regulations for Appointment of Contract Counsel in Cases Under the Indigent Defense Services Act.](#)"

C. Compensation.

1. Upon certification of the reported data on the 7th of each month, IDS will pay the Contractor for all hours reported the previous month. See "[Current Hourly Assigned Counsel Rates.](#)"
2. Contractor will be reimbursed for case-related expenses such as travel or lodging based on [IDS billing policies](#), which are incorporated by reference.
3. Compensation provided in Paragraph C.2. above, 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.
4. The Contractor shall maintain a federal tax identification number for payment and identity security purposes.

D. General Contractor Obligations

1. The Contractor shall accept appointment to cases as specified in Appendices.
2. The Contractor shall comply with the "[IDS Scope of Representation Policy](#)", which is incorporated by reference.
3. The Contractor may take pauses in assignments and turn cases down for appropriate reasons. If the Contractor will not be taking cases for a significant period of time, in excess of 7 days, the Contractor must coordinate coverage and notify IDS and the clerk of court and/or Public Defender Office, as applicable.
4. IDS will monitor the roster and case assignments and may elect when needed to add attorneys to the roster to ensure there is an adequate number of attorneys not in the same firm to avoid conflicts.
5. During the term of this agreement, Contractor shall maintain malpractice insurance of such type and with such terms and limits as may be reasonably associated with this agreement. This insurance shall at a minimum have liability limits of \$100,000 per claim and \$300,000 annual aggregate.
6. The Contractor shall maintain sufficient staff and resources to adequately provide for

the competent representation of clients pursuant to this agreement, and the Contractor agrees to pay all expenses incidental to the performance of the duties under this agreement, including salaries, overhead, and workers compensation and malpractice insurance, out of the compensation provided in Paragraph C above. The Contractor shall not subcontract or assign this contract without prior written consent of IDS.

7. If the Contractor is an individual attorney and the Contractor changes law firms, the obligations in this contract, both for pending and for newly assigned cases, shall continue within the framework of the new law firm. If the Contractor is an entity such as a law firm or non-profit and one named attorney changes law firms, the obligations in this contract for pending and newly assigned cases shall remain with the entity, assuming the entity has a suitable replacement for the attorney. In that event, the entity shall obtain advance written approval for the substitution from the IDS Director in accordance with IDS policies. To the extent possible, Contractors that are entities shall ensure that contract clients receive continuity of representation; however, if the entity, the departing attorney, and IDS agree, the attorney may continue representation on any of his or her pending cases and receive payment via a new contract either as an individual attorney or to the new law firm.
8. The Contractor shall immediately notify IDS, the clerk of court, and, if applicable, the Public Defender Office in the county of any changes in name or contact information status.
9. The Contractor shall designate an alternate individual to be an emergency contact and shall give the individual's contact information to IDS.
10. The Contractor may engage in the private practice of law except in cases where there would be a conflict with a previous assignment arising out of this agreement.

E. Data Reporting Obligations; Penalties for Late Reporting; Submission of Recoupment Application.

1. The Contractor shall provide IDS with monthly reports in an IDS-approved format, setting forth cases appointed to the Contractor and the hours spent by the Contractor in handling cases pursuant to this agreement, and any such other information or reports as IDS may reasonably request.
2. If the Contractor has not provided time data for a month, the Contractor will have a one-month grace period to be paid upon provision of the data. If the Contractor does not provide data for two consecutive (2) months, the Contractor will be penalized by 30% of the total billing for the month the data are received. The 30% penalty will continue until the Contractor's time data are current.
3. Contractor shall comply with the following IDS policies regarding recoupment:
 - a. Pursuant to N.C.G.S. 7A-455 and 7A-455.1 for attorney fees and the attorney appointment fee in all criminal cases that result in a conviction or a plea of guilty or no contest, or a finding of probation violation, and all non-child support

- contempt cases that result in a finding of criminal contempt.
- b. Pursuant to N.C.G.S. 7A-450.3 for attorney's fees in all non-criminal cases when the judge orders the Contractor to do so.

F. Contract Termination and Funding Modifications.

1. In the event that the Contractor breaches any term of this agreement, or in the event that IDS learns of any circumstance that casts substantial doubt on the Contractor's ability to provide proper and competent representation of clients, including but not limited to recurrent problems with court appearances due to scheduling conflicts, complaints submitted to the State Bar or others about the Contractor, as detailed in Paragraph F.2. below, or abuses of the system to include billing practices, the Executive Director of IDS may cancel this agreement effective immediately upon sending written notice to the Contractor. In lieu of termination, the Executive Director of IDS may seek remediation, at his or her discretion.
2. The Contractor must notify IDS within five (5) days of any of the following: public discipline of any level issued by the Grievance Committee of the State Bar or the Disciplinary Hearing Commission; a judicial finding of misconduct or ineffective assistance of counsel; a formal admission by counsel of ineffective assistance; or filing of criminal charges against the Contractor. Contractor shall provide any documentation regarding such actions as reasonably requested by IDS.
3. If the contract is terminated pursuant to Paragraph F.1. above, the Contractor shall continue to enter data in the database to be paid. The Contractor shall continue to be responsible for the cases assigned under the contract until they are resolved, or the court relieves the Contractor of the assignment.

G. Miscellaneous Terms.

1. This contract shall be governed by the laws of the State of North Carolina.
2. The Contractor is an independent contractor and not an employee of IDS.
3. The Contractor shall protect, indemnify, defend, and hold harmless IDS and the State of North Carolina from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of the activities of the Contractor or the Contractor's employees or agents.
4. Subject to any other exceptions provided by law, the Contractor shall allow the State Auditor access to records as a result of all contracts entered into by state agencies in accordance with N.C. Gen. Stat. § 147-64.7.
5. Neither party shall be held responsible for consequential damages for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by following the procedures in Section 10.
6. This agreement and its appendices constitute the entire agreement of the parties.

There are no written or oral promises, inducements, representations, or conditions of any nature pertaining hereto except as expressly set forth in writing herein. This agreement can be amended only in writing signed by all parties.

7. This agreement is conditioned on the availability of funds appropriated by the North Carolina General Assembly to IDS.
8. Unless otherwise provided by law, all data reported by Contractor shall be subject to public access if required under the state public records laws.

H. **Appendices:** Any appendices to this Agreement are incorporated into and part of this Agreement.

Contractor:

Office of Indigent Defense Services:

Attorney at Law

Mary S. Pollard, Executive Director

Date

Date

Appendices:

Appendix 1 – Additional Definitions (check all applicable)

- Abuse, Neglect, or Dependency and Termination of Parental Rights
- Adult Criminal
- Civil Commitment
- Guardianship
- Juvenile Delinquency
- Other: _____

Other Referenced Documents:

1. [Regulations for Appointment of Contract Counsel in Cases Under the Indigent Defense Services Act](#)
2. [Private Attorney Fee and Expense Policies \(Non-Capital Criminal and Non-Criminal Cases at the Trial Level\)](#)
3. [Scope of Representation Policy](#)
4. [Current Hourly Assigned Counsel Rates](#)

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