

MEMORANDUM

To: Indigent Defense Attorneys, Public Defenders
 Cc: District and Superior Court Judges, Clerks of Superior Court
 Re: IDS Policies Governing Attorney Fee and Expense Applications in
 Non-Capital Criminal and Non-Criminal Cases at the Trial Level
 From: Office of Indigent Defense Services
 Date: Updated July 1, 2023

Pursuant to G.S. 7A-454, G.S. 7A-458, and G.S. 7A-498.3(c), the Office of Indigent Defense Services (“IDS”) hereby adopts the following policies and procedures, which shall govern fee applications that are directed to district and superior court judges in indigent non-capital criminal and non-criminal cases at the trial level.

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I. Attorney Fee and Expense Applications

A. The Application Forms:

Non-Capital Criminal Cases

To seek compensation in any non-capital criminal case at the trial level that is finally disposed on or after December 1, 2014 (or with an ending date of services on or after December 1, 2014), the appointed attorney must submit the following fee application form to the presiding district or superior court judge, available at www.ncids.org:¹

- AOC-CR-225 (Non-Capital Criminal Case Trial Level Fee Application, Rev. 12/20)²: An attorney applicant must complete this form for payment in any non-capital criminal case at the trial level.

Juvenile Delinquency Cases

To seek compensation in any juvenile delinquency case at the trial level that is finally disposed on or after September 1, 2015, the appointed attorney must submit the following fee application form to the presiding district or superior court judge, available at www.ncids.org:

- AOC-J-411 (Juvenile Delinquency Trial Level Fee Application, Rev. 12/20): An attorney applicant must complete this form for payment in any juvenile delinquency or undisciplined contempt case.

¹ Applicants seeking compensation for representation in cases that began with a charge of first-degree murder or undesignated degree of murder at the trial level (except cases in which the defendant was under 18 years of age at the time of the offense), as well as in capital appeals or capital post-conviction cases, should complete form AOC-CR-425 and submit it directly to the IDS Office. See IDS Rule 2A.1(a). Applicants seeking compensation for representation in non-capital criminal or non-criminal appeals should complete form AOC-CR-426 and submit it directly to the IDS Office. Policies governing fee applications that are submitted directly to the IDS Office are available at www.ncids.org.

² The prior version of this form may be used for cases with an earlier disposition date or ending date of services.

Non-Criminal Cases

To seek compensation in any non-criminal case at the trial level that is finally disposed on or after December 1, 2014 (or with an ending date of services this fee requested on or after December 1, 2014), the appointed attorney or guardian ad litem must submit the following fee application form to the presiding district or superior court judge, available at www.ncids.org:

- AOC-G-200 (Civil Case Trial Level Fee Application, Rev. 12/20)³: An attorney or guardian ad litem applicant must complete this form for payment in any civil proceeding, such as abuse/neglect/dependency, termination of parental rights, competency, commitment, and child support contempt cases.

B. Fee Application Deadlines:

- Attorneys should consult IDS Rule 1.9(a)(1a) for deadlines on the submission of final fee applications in non-capital criminal and non-criminal cases at the trial level.
- Final attorney fee applications must be signed by the appointed attorney and submitted to the trial judge within no more than one year after the date on which the case was finally disposed at the trial level. A disposition of “voluntarily dismissed with leave” is a final disposition that triggers the one-year deadline.
- If a fee application was not submitted within the applicable deadline, the attorney may be eligible to apply to the IDS Director for a waiver of the deadline in accordance with IDS Rule 1.9(a)(1a) and IDS Policy, Extensions and Waivers of Appointed Attorney Fee Application Deadlines, *available at* www.ncids.org.

C. General Billing Principles:

- Attorney time must be tracked and reported in hours and tenths of an hour (6 minute increments).
- Attorney time must be reported on fee applications in decimals, not minutes. (For example, if an attorney is claiming one and a half hours on a case, he or she should report that time as 1.50 hours, not 1.30 hours.)
- Attorneys must report their total time claimed, as well as their total time broken down into time in court, time out of court, and time waiting. Time in court is time spent in a court proceeding before a presiding judge or clerk. Time out of court is time spent preparing the case, including negotiations with the prosecution or other opposing counsel, even if such activities take place at the courthouse. Time spent waiting in court is time during which the attorney must be present in court waiting for an appointed case to be called or heard, and the attorney is unable to use that time to conduct work on other cases.
- If an attorney seeks compensation for time spent waiting in court for multiple cases to be called or working on multiple cases simultaneously, the attorney’s time must be prorated among each of the cases involved. IDS Rule 1.9(a)(1a).
- Attorney time spent preparing a fee application is not compensable.
- Absent exceptional circumstances that warrant personal delivery, attorney time and expenses associated with traveling to a court in another county for the sole purpose of hand-delivering or filing a document are not compensable.

- If required by the presiding judge or local rule, an applicant should attach to his or her fee application an itemized billing record that provides sufficient detail regarding counsel's services in the case to demonstrate that the claim for compensation is reasonable.

D. The Identity of the Attorney Applicant:

- The fee application forms require the attorney applicant to identify himself or herself as assigned counsel, public defender, or IDS contract counsel. (For civil cases, there is also an option for guardians ad litem.)

Check the "assigned counsel" box *if*:

- ✓ You are a private attorney and you are submitting one fee application for one client pursuant to an individual appointment to represent that person; or
- ✓ You are a private attorney and you are submitting one fee application for several clients handled on a per session or per day basis pursuant to a fee arrangement that was pre-approved by IDS. In such circumstances, you should write "various clients" in the file number box and attach the court docket to the fee application.
- Check the "public defender" box *if*: You are a salaried state employee who works in one of the district public defender offices, and you are submitting the fee application solely for recoupment purposes (see Section IV. below).
- Check the "IDS contract counsel" box *if*: You are a private attorney who handled the case pursuant to a contract directly with the IDS Office, you are paid a set amount at regular intervals pursuant to the contract, and you are submitting the fee application solely for recoupment purposes (see Section IV. below).

E. Fee Applications Involving One Client with Multiple Cases:

- General Rule: If an attorney represents one client in multiple cases, and all of the cases are disposed of before the same Judge on the same day in the same court, the attorney should complete only one fee application for all of the cases.
- Exception: If an attorney was appointed to handle multiple cases involving the same client, and one or more of the cases arose out of a different transaction, was assigned to counsel at a different time, and resulted in an acquittal or was dismissed by the prosecution on the same day as the unrelated cases but *not* as part of a plea agreement in the unrelated cases, the attorney may complete a separate fee application for the acquitted or dismissed case that arose out of a different transaction.
- File Numbers: If you are submitting one fee application for one client where there are multiple file numbers, you should report the lowest file number in the highest court in the box labeled "File No.," and should report any other file numbers in the box labeled "Additional File Nos."
- Non-Capital Criminal Dispositions:
 - ✓ In completing a fee application for one client with multiple cases, you should view all of the cases disposed of together as a unit when reporting the original charge and the most serious disposition.
 - ✓ If the defendant pled guilty before trial to the most serious original charge, the most serious disposition should be reported as "Guilty Plea Before Trial: Most Serious Original Charge," regardless of the disposition of the less serious charges. Similarly, if the defendant was convicted at trial of the most serious original charge, the most serious disposition should be reported as "Trial: Guilty Most Serious Original Charge," regardless of the disposition of the less serious charges.

- ✓ If, on the other hand, the defendant pled guilty before trial to anything other than the most serious original charge, the most serious disposition should be reported as “Guilty Plea Before Trial: Other Offense.” For example, if you represented a client on a Class B and Class E felony, and both were disposed of together, the highest original charge should be reported as a Class B felony. If the Class B felony was dismissed, but the client pled guilty before trial to the Class E felony as charged, the most serious disposition should be reported as “Guilty Plea Before Trial: Other Offense.”
- Juvenile Delinquency Resolution of Charges:
 - ✓ In completing a fee application for one juvenile with multiple cases, you should view all of the cases disposed of together as a unit when reporting the original charge and the most serious resolution of charges.
 - ✓ If the juvenile admitted to the most serious original charge, the most serious disposition should be reported as “Admission: Most Serious Original Charge,” regardless of the disposition of the less serious charges. Similarly, if the juvenile was adjudicated delinquent of the most serious original charge, the most serious disposition should be reported as “Adjudicatory Hearing: Responsible—Most Serious Original Charge,” regardless of the disposition of the less serious charges.
 - ✓ If, on the other hand, the juvenile was adjudicated delinquent of an offense other than the most serious original charge, the most serious disposition should be reported as “Adjudicatory Hearing: Responsible—Other Offense.” For example, if you represented a juvenile on a Class C felony and a Class F felony, and both were disposed of together, the highest original charge should be reported as a Class C felony. If the juvenile was found not responsible for the Class C felony, but the juvenile was adjudicated responsible for the Class F felony, the most serious disposition should be reported as “Adjudicatory Hearing: Responsible—Other Offense.”

F. Date First Substantive Client Interview (AOC-CR-225):

- AOC-CR-225 requires the attorney to provide the date of the first substantive client interview.
- Attorneys who conduct an initial substantive client interview by some means other than in person, such as telephone or video conferencing, are encouraged to indicate the other means in parentheses after the date—*e.g.*, 10/10/10 (phone) or 10/10/10 (video).
- If the attorney arranges for a designee, such as an investigator or paralegal, to conduct the initial interview, the date of the designee’s interview should be provided in that field.

G. Grounds for Return: Non-Capital Criminal Case Fee Applications (AOC-CR-225):

- All fee applications must be typed or printed legibly. Fee applications that are incomplete or illegible will be returned to the Clerk’s Office unpaid.
- Criminal fee applications that do not include the following information will be returned to the Clerk’s Office for completion or clarification:
 - ✓ Court
 - ✓ County
 - ✓ File number(s) (if there are multiple file numbers, see Section I.E. above)
 - ✓ Name and address of indigent client
 - ✓ Social security number of indigent client or indication that s/he has no social security number (if you cannot determine the client’s social security number after reasonable efforts, write “unknown”)
 - ✓ Most serious original charge, including felony class (if applicable)

- ✓ Most serious disposition
- ✓ Missing, invalid, or incomplete Assignment of Counsel (AOC-CR-224) for any Class 3 Misdemeanor, including traffic
- ✓ Most serious judgment and sentencing
- ✓ Disposition date (if final fee)
- ✓ Beginning and ending dates for services rendered (even if you are being paid pursuant to a flat fee schedule that has been pre-approved by IDS)
- ✓ Prior total fees and expenses allowed by a judge in the case (if applicable)
- ✓ Total time claimed, as well as total time broken down into time in court, time waiting, and time out of court (unless you are being paid pursuant to a flat fee schedule that has been pre-approved by IDS)
- ✓ Expense information (if applicable); receipts are required for expenses that exceed \$25
- ✓ The attorney's name, address, telephone number, and taxpayer identification number
- ✓ The attorney's signature
- ✓ The amount of fees and expenses allowed by the judge setting the fee
The name and signature of the judge setting the fee

H. Grounds for Return: Juvenile Delinquency Fee Applications (AOC-J-411):

- All fee applications must be typed or printed legibly. Fee applications that are incomplete or illegible will be returned to the Clerk's Office unpaid
- Juvenile delinquency fee applications that do not include the following information will be returned to the Clerk's Office for completion or clarification:
 - ✓ County
 - ✓ File number(s) (if there are multiple file numbers, see Section I.E. above)
 - ✓ Name and address of indigent juvenile
 - ✓ Most serious original charge, including felony class (if applicable)
 - ✓ Most serious resolution of charges
 - ✓ Most serious disposition
 - ✓ Disposition date
 - ✓ Total time claimed, as well as total time broken down into time in court, time waiting, and time out of court (unless you are being paid pursuant to a flat fee schedule that has been approved by IDS)
 - ✓ Expense information (if applicable); receipts are required for expenses that exceed \$25
 - ✓ The attorney's name, address, telephone number, and taxpayer identification number
 - ✓ The attorney's signature
 - ✓ The amount of fees and expenses allowed by the judge setting the fee
 - ✓ The name and signature of the judge setting the fee

I. Grounds for Return: Civil Case Fee Applications (AOC-G-200):

- All fee applications must be typed or printed legibly. Fee applications that are incomplete or illegible will be returned to the Clerk's Office unpaid.
- Civil fee applications that do not include the following information will be returned to the Clerk's Office for completion or clarification:
 - ✓ Court
 - ✓ County
 - ✓ File number(s) (if there are multiple file numbers, see Section I.E. above)
 - ✓ Name of indigent client
 - ✓ Original proceeding (appointed attorney or guardian ad litem section)

- ✓ Most serious disposition (appointed attorney or guardian ad litem section)
- ✓ Disposition date (if final fee)
- ✓ Beginning and ending dates for services rendered (even if you are being paid pursuant to a flat fee schedule that has been pre-approved by IDS)
- ✓ Prior total fees and expenses allowed by a judge in the case (if applicable)
- ✓ Total time claimed, as well as total time broken down into time in court, time waiting, and time out of court (unless you are being paid pursuant to a flat fee schedule that has been approved by IDS)
- ✓ Expense information (if applicable); receipts are required for expenses that exceed \$25
- ✓ The attorney's or guardian ad litem's name, address, telephone number, and taxpayer identification number
- ✓ The attorney's or guardian ad litem's signature
- ✓ The amount of fees and expenses allowed by the judge setting the fee
- ✓ The name and signature of the judge setting the fee

II. Standard Hourly Attorney Fees

A. Standard Hourly Rates: (See Section VII., below, for answers to frequently asked questions about the hourly rates)

- ✓ **Fees Set By District Court Judges:**
 - For all cases finally disposed in District Court where the most serious original charge was a non-potentially capital Class A through D felony and the fee was set on or after January 01, 2022, the rate is \$85 per hour.
 - For all other cases finally disposed in District Court, the rate will be \$65 per hour.
 - Any non-capital post-conviction claims brought in District Court should be paid at the same rates but based on the most serious conviction. For example, a non-capital post-conviction challenge to a misdemeanor conviction that is brought in District Court should be paid at the \$65 hourly rate.
- ✓ **Fees Set By Superior Court Judges:**
 - For all cases finally disposed in Superior Court where the most serious charge carries a sentence, or potential sentence, of life without parole (LWOP) and the fee was set on or after January 01, 2022, the rate is \$100 per hour.
 - For all cases finally disposed in Superior Court where the most serious original charge was Class B1-D felony, was a satellite-based monitoring "bring back" hearing, review of NGRI determinations, or non-capital, post-conviction case where the most serious charge was a Class A-D felony, the rate is \$85 per hour.
 - For all other cases finally disposed in Superior Court, including misdemeanor appeals, the rate is \$65 per hour.
 - Any non-capital post-conviction claims brought in Superior Court should be paid at the same rates, but based on the most serious conviction. For example, a non-capital post-conviction challenge to a Class B felony conviction that is brought in Superior Court should be paid at the \$85 hourly rate if the date of final disposition is January 01, 2022 or later, but a non-capital post-conviction challenge to a Class E felony conviction that is brought in Superior Court should be paid at the \$65 hourly rate.
- ✓ **Fees Set By Clerks:**
 - For all cases finally disposed before a Clerk on or after January 01, 2022, the rate will be \$65 per hour.

- Pursuant to IDS Rule 1.9(a)(1b) and (a)(2), judges are asked to review the hours claimed on each fee application and to approve or reduce those hours on line 1 in Section II. of the fee application forms. Judges should make that determination based on the factors normally considered in setting attorney fees, such as the nature of the case, the experience of the lawyer, and the effort and responsibility involved. Once the judge has approved a certain amount of time, the fee should be calculated by multiplying the hours approved by the applicable hourly rate.
- Fee awards that are not set at the applicable standard hourly rate for the approved amount of time (or a pre-approved alternative rate pursuant to II.B. below) will be returned with a request that the amount be adjusted before payment is issued.

B. Deviations from the Standard Rates:

- Districts may utilize compensation systems other than IDS' standard hourly rates, such as per case fee schedules or per session rates, only with the prior written approval of the IDS Director. See IDS Rule 1.9(a)(5).

III. Reimbursable Expenses

The following case-related expenses are reimbursable if the judge setting the fee finds them to be necessary and reasonable. Attorneys may seek prior approval of expenses from a Judge before they are incurred.

A. In-State Travel:⁴

- Mileage: Mileage is reimbursable at the current state rate for travel outside of the county of the attorney's office. Travel within the county of the attorney's office is not reimbursable. For current per diem rates see: <https://www.ncids.org/counsel-rates/> ("Expense Reimbursement Rates"). The fee application or time sheets should indicate the number of miles traveled.
- Meals: Meals are only reimbursable if there is an overnight stay and then in accordance with the current state authorized per diem, with one per diem per overnight stay. Receipts are not required. For current per diem rates see: <https://www.ncids.org/counsel-rates/> ("Expense Reimbursement Rates").
- Lodging: The actual cost of over-night lodging is reimbursable, not to exceed the current state authorized rate, plus actual taxes incurred. A valid hotel receipt is required, and credit card receipts will not be accepted. For current lodging rates see: <https://www.ncids.org/counsel-rates/> ("Expense Reimbursement Rates").

⁴ Reimbursement rates for travel-related expenses are based on the current travel allowances for State employees. See G.S. 138-6.

- B. Out-Of-State Travel:** *Attorneys are urged to obtain prior written approval from a Judge before incurring out-of-state travel expenses.*
- **Travel Costs:** Reasonable travel costs are reimbursable with receipts.
 - **Meals:** Meals are only reimbursable if there is an overnight stay and then in accordance with the current state authorized per diem, with one per diem per overnight stay. Receipts are not required. For current per diem rates see: <https://www.ncids.org/counsel-rates/> (“Expense Reimbursement Rates”).
 - **Lodging:** The actual cost of over-night lodging is reimbursable, not to exceed the current state authorized rate, plus actual taxes incurred. A valid hotel receipt is required, and credit card receipts will not be accepted. For current lodging rates see: <https://www.ncids.org/counsel-rates/> (“Expense Reimbursement Rates”).
- C. Photo-Copying:**
- In-house copying costs are reimbursable at a rate not to exceed \$0.10 per page for single-sided copies and \$0.16 per page for double-sided copies. The applicant must indicate the number of copies prepared, whether they were single or double-sided, and the price charged per page.
 - The actual cost of out-of-house copies are reimbursable with a receipt, at a rate not to exceed \$0.10 per page for single-sided copies and \$0.16 per page for double-sided copies.
- D. Printing Digital Discovery:**
- Effective March 24, 2014, if counsel receives discovery in an electronic format, counsel may print any documents that will be entered into evidence or used in examining witnesses, or when a hard copy is otherwise necessary to prepare the case. However, absent extraordinary circumstances, IDS will not reimburse counsel for printing one or more copies of the entire discovery package.
 - This limitation does not apply if the only way to satisfy a client’s request for discovery is for counsel to print the entire discovery package for the client. In no event will IDS reimburse counsel for printing a copy of the entire discovery package for an investigator.
- E. Facsimiles:**
- The cost of sending facsimiles from a personal or office machine is reimbursable at a rate not to exceed \$0.05 per page.
 - The actual cost of sending facsimiles from an outside machine, such as a hotel facsimile machine, is reimbursable with a receipt.
- F. CDs/DVDs/Audiotapes:**
- The cost of blank CDs, DVDs, or audiotapes is reimbursable at a rate not to exceed \$1.00 each.
- G. Online Video Conferencing with Clients in Jail:**
IDS will reimburse an attorney for actual expenses incurred in utilizing an online video conferencing system to meet with appointed clients who are in the custody of a local jail, at a rate not to exceed \$.65 per minute. Counsel must attach to the fee application a receipt from the company that runs the video conferencing system.

H. Computerized Legal Research:

- The actual case-related costs of computerized legal research (*e.g.*, Lexis-Nexis and Westlaw) are reimbursable only if receipts are provided.
- Courtsearch, NC 123, DMV and DOC searches, etc.: The actual case-related costs of any such computerized searches are reimbursable only if receipts are provided. If actual costs are not incurred, an attorney may be compensated for his or her time according to the applicable hourly rate, but may not be compensated any amount per search.

I. Paralegal or Legal Assistant Time:

- If the judge setting the fee finds it to be necessary and reasonable, IDS will compensate an attorney as a reimbursable expense for the time of an in-house paralegal or legal assistant at a rate of \$15 per hour. The total cost of the paralegal's time should be reported in the field on the fee application form that is labeled "Other (attach receipts if > \$25)." The fee application must be accompanied by an itemized billing record setting forth the paralegal's or legal assistant's time. Paralegal or legal assistant services will only be reimbursed if they are directly related to a case file, and will not be reimbursed if they involve routine administrative office tasks.

J. Providing Closed Client Files:

- Rule 1.16(d) of the Revised Rules of Professional Conduct, as well as Comments [10] and [11] to Rule 1.16, obligate an attorney whose employment is terminated to surrender to the former client "all papers . . . to which the client is entitled." With the exception of an attorney's own notes and incomplete work product, the client is entitled to originals or copies of anything in the file that would be helpful to a successor attorney. Moreover, according to the State Bar, the attorney cannot charge the client if the attorney wants to keep a copy of the client's file for his or her own records. Thus, if a client requests his or her file at the conclusion of the representation or any time thereafter, IDS generally will not compensate an appointed attorney for time spent scanning or preparing copies of an original paper file or reimburse an appointed attorney for scanning or copying expenses.
- However, if the attorney received documents in the client's file in electronic format and never created a paper copy, IDS will reimburse an appointed attorney for expenses associated with preparing a paper copy from the electronic media to provide to an incarcerated client who is requesting those documents. If the attorney received documents in the client's file in paper format and wants to convert them to an electronic format for storage purposes, IDS recommends that the attorney offer the paper record to the client in writing at the conclusion of the representation. If the client declines the paper copy in writing or does not respond to the attorney's offer (and the attorney is reasonably certain that the address for the client is correct and that the client can receive mail at that address), but subsequently requests a copy of the file, the State Bar staff has informed IDS that the attorney may satisfy his or her ethical obligations to the client by providing the file to the client or the client's designee in electronic format, even if the client is incarcerated. Thus, IDS will not reimburse an appointed attorney for expenses associated with preparing a paper copy from the electronic media under those circumstances.
- IDS will compensate an appointed attorney for time spent retrieving a former client's file from storage and for other reasonable time spent responding to a client's request for his or her file, and will reimburse an attorney for postage expenses claimed in compliance with Section III.K., below. If these activities are performed at the conclusion of the representation, the

appointed attorney should include the allowed time and expenses on his or her final fee application. If these activities are performed after the conclusion of the representation and after a final fee application has been submitted, the attorney may submit a supplemental fee application for reasonable allowed time and expenses (other than scanning or copying). In that instance, the attorney must write “Supplemental—Former Client Files” at the top of the fee application form. On that form, the attorney should indicate the most serious offense in the original charge column (for criminal and delinquency cases) or the original proceeding (for criminal cases), and then check “other” and write “providing files” in the disposition and judgment and sentencing columns (for criminal cases) or the resolution and disposition columns (for delinquency cases) or the disposition column (for civil cases). When a former client requests the file after the one-year deadline for the submission of fee applications has expired, that deadline shall not apply to supplemental fee applications for the allowed time and expenses associated with providing a former client with copies of his or her file. Because of the State Bar’s opinion that an attorney cannot charge the client if the attorney wants to keep a copy of a closed client file for his or her own records, IDS will not seek recoupment of these expenses.

K. Other Expenses:

- For all “other expenses” that cumulatively exceed \$25.00 (*e.g.*, parking, postage, film, etc.), an applicant must submit receipts or supporting documentation. If “other expenses” do not cumulatively exceed \$25.00, receipts or supporting documentation are not required.
- Normal overhead expenses, such as case notebooks, paper, push pins, etc., are not reimbursable.

IV. Recoupment: Findings of Fact and Civil Judgments for Attorney Fees

A. Non-Capital Criminal Cases at the Trial Level (AOC-CR-225):

- The back of form AOC-CR-225 is designed to facilitate the entry of civil judgments against a defendant who has been convicted or pled guilty or nolo contendere pursuant to G.S. 7A-455 (attorney fees) and G.S. 7A-455.1 (\$75 attorney appointment fee).⁵
- If the Judge signs Section IV. of form AOC-CR-225, and does not check any of the boxes in Section III. under Judgment #1 or Judgment #2, the Judge has entered judgments for the total amount of attorney fees and the \$75 attorney appointment fee.
- If the Judge determines that a judgment is not appropriate for attorney fees and/or the \$75 attorney appointment fee, the appropriate “opt out” box must be checked under Judgment #1 and/or Judgment #2.
- When completing this fee application, attorneys should provide the name, address, and social security number of the defendant at the top of form AOC-CR-225. (If an attorney cannot determine the client’s social security number after reasonable efforts, he or she should write “unknown.”)

B. Juvenile Delinquency Cases at the Trial Level (AOC-J-411):

- The back of form AOC-J-411 is designed to allow the Judge to enter a civil judgment against a responsible parent or guardian for the value of legal services provided to a juvenile in a delinquency proceeding.

⁵ A separate memorandum has been distributed to court officials concerning the implementation of G.S. 7A-455.1, as revised by Session Law 2005-250, which provides for a \$60 attorney appointment fee in criminal cases.

- Pursuant to G.S. 7A-450.1 through -450.4 and G.S. 7B-2000, the Judge has discretionary authority to enter a judgment against a responsible person if the juvenile was adjudicated delinquent. In deciding whether to enter judgment, the Judge should consider the factors set forth in G.S. 7A-450.3.
- When completing this fee application, attorneys should provide the name, address, and social security number of any potentially responsible parent or guardian in Section III. of form AOC-J-411.

C. Civil Cases at the Trial Level (AOC-G-200):

- The back of form AOC-G-200 is designed to allow the Judge to enter a civil judgment against either a respondent or a responsible parent or guardian in certain types of proceedings.
- Pursuant to G.S. 7A-450.1 through -450.4 and G.S. 7B-603, the Judge has discretionary authority to enter a civil judgment against the respondent for the value of attorney services provided to the respondent in the following types of cases: 1) abuse, neglect, or dependency cases in which the child was found to have been abused, neglected, or dependent; and 2) termination of parental rights proceedings in which the parent's rights were terminated. In deciding whether to enter judgment against the respondent, the Judge should consider the factors set forth in G.S. 7A-450.3.
- Pursuant to G.S. 7A-455, the Judge may also enter a civil judgment against a respondent who has been held in criminal contempt in a child support contempt proceeding.
- When completing this fee application, attorneys should provide the name, address, and social security number of the respondent or any potentially responsible parent or guardian in Section III. of form AOC-G-200.

D. Fee Applications Submitted by Public Defenders or IDS Contract Counsel:

- When a fee application is submitted by a public defender or IDS contract counsel solely for recoupment purposes, the Court should fix the value of services rendered based on the same hourly rates outlined in Section II., above, and enter civil judgment(s) as appropriate. In those cases, the Clerk should docket the judgment(s) as provided by law and file the fee application in the court file. Fee applications that are submitted by public defenders and IDS contract counsel should not be forwarded to IDS Financial Services for payment.

V. Expert and Support Services

A. Expert Fees:

- *Attorneys should never pay an expert with their own funds and then seek reimbursement.*
- Prior authorization is required for the use of any expert services. Prior to October 17, 2011, that authorization may be sought by the attorney for the defendant or respondent submitting a motion and proposed Order to the presiding judge. On or after October 17, 2011, that authorization must be sought by the attorney for the defendant or respondent completing and submitting form AOC-G-309, along with a supporting motion, to the presiding judge. If permitted by case law, the attorney for the defendant or respondent may submit that form and the supporting motion *ex parte*. The requesting attorney does not need to complete form AOC-G-309 for non-expert flat fee services, such as polygraph examinations,⁶ medical

⁶ For defense requested polygraph examinations that are preapproved by a judge, IDS pays a flat fee of \$750.

procedures, lab testing, or defense requested sentencing plans;⁷ to seek prior approval for such services, the attorney should submit a motion and proposed Order to the Court.

- Form AOC-G-309 sets forth a standardized hourly rate schedule for different types of experts, and also serves as the vehicle for the expert to seek payment.
- In extraordinary circumstances, the IDS Director may grant deviations from the standardized base compensation rates listed on form AOC-G-309 when the requesting attorney demonstrates that they are necessary and appropriate based on case-specific needs and the following policies:
 - ✓ Deviations may be granted if the requested expert services are in a new, emerging, or novel area and there are a limited number of experts in the field.
 - ✓ Deviations may be granted if the requested expert services are so unique that there are a limited number of available and qualified experts. For example, there is only one expert who can provide the needed services (*e.g.*, the medical examiner who performed the autopsy) and he or she has refused to provide the services at the applicable standardized rate.
 - ✓ Deviations may be granted based on other exceptional circumstances that justify a deviation from the standardized rates. For example, counsel needs the services of a specific type of expert and has contacted five or more experts in that field and none of the contacted experts were willing and available to provide the needed services at the needed time at the standardized rate.
- Effective October 17, 2011, deviations shall be requested by the attorney of record by completing form AOC-G-310 and submitting it to the IDS Director pursuant to the instructions on that form. Before requesting a deviation from the standardized base hourly rates, counsel must consult with IDS' Forensic Resource Counsel to identify other similar experts in the required field.

B. Lay Witness Fees:

- Compensation for the time and expenses of lay witnesses is governed by G.S. 7A-314(a)-(c) & (e). Those provisions set statutory allowances for the time, mileage, lodging, and meals for lay witnesses.
- If you are seeking compensation for a lay witness in any category of case, you should complete form AOC-CR-235 ("Witness Attendance Certificate") and submit it to the Clerk or Judge as required by G.S. 7A-314. You should also complete Side Two of form AOC-CR-382 ("Certification of Identity (Witness Attendance)") and submit it to IDS Financial Services.

C. Foreign Language Interpreters:

- If an attorney needs the services of a foreign language interpreter or translator in any category of case, he or she should obtain prior authorization from the Court. For details about obtaining an out-of-court interpreter or translator, see the IDS policy on out-of-court foreign language interpreters and translators, *available at* www.ncids.org under the "Rules & Procedures" link.

D. Interpreters for Deaf Persons:

- G.S. 8B-2, 8B-6, and 8B-8 (1999) govern the appointment and compensation of interpreters for deaf persons.

⁷ For defense requested sentencing plans that are preapproved by a judge, IDS pays a flat fee of \$500.

- If you need the services of a sign language interpreter in any category of case, you should obtain prior authorization from the Court using AOC-G-116 (“Motion, Appointment And Order Authorizing Payment Of Deaf Interpreter Or Other Accommodation”). The interpreter can then seek payment from the Clerk using that same form.

VI. Clerk Responsibilities

A. Fee Awards Must be Sent to IDS by the Clerk’s Office:

- IDS Financial Services will only accept appointed attorney fee awards from the Office of the Clerk of Superior Court in the county where the case originated.
- The Clerk’s Office does not have to certify each individual fee application. However, whenever fee applications are mailed to Financial Services, the Clerk’s Office must include in the envelope a cover letter on official letterhead stating that the enclosed fee applications are being mailed directly from the Office of the Clerk of Superior Court.
- Fee applications that are mailed to Financial Services by appointed attorneys will be returned to the attorneys unpaid.

B. Timely Forwarding of Fee Awards:

- We urge Clerk’s Offices to forward attorney fee awards to Financial Services as promptly as possible. Prompt forwarding of fee awards allows IDS to pay attorneys as quickly as possible for their services and to capture accurate data about the demand on the indigent defense fund.
- Information about the timing of attorney payments, including check run dates, is posted at www.ncids.org under the “News & Updates” link.

VII. Frequently Asked Questions About the New Standard Hourly Attorney Rates

In determining the appropriate hourly rate pursuant to the fee schedule set forth in Section II., above, attorneys, Judges, and Clerks should follow the disposition rules outlined in Section I.E., above, and utilize the highest applicable hourly rate:

1. **Question:** What rate applies to misdemeanor appeals to Superior Court? Does the attorney have to file an interim fee application in District Court upon entering notice of appeal and get paid the District Court rate per hour for the time in District Court, and then file a final fee application in Superior Court and get paid the Superior Court rate per hour for the time in Superior Court? Or does the attorney wait until the case is resolved in Superior Court and get the Superior Court rate for all time in both courts?

Answer: The applicable rate will depend on how the attorney bills. If the attorney submits an interim fee application in District Court and a final fee application in Superior Court, the District Court time should be paid at the District Court rate and the Superior Court time should be paid at the Superior Court rate. On the other hand, if the attorney submits only one final fee application in Superior Court, all time should be paid at the Superior Court rate.

2. **Question:** Does the answer to Question #2 change if the case is remanded from Superior Court back to District Court?

Answer: At the time of remand, attorneys are encouraged to submit an interim fee application in Superior Court at the appropriate Superior Court rate, and then to submit a final fee application for any additional time on remand in District Court at the appropriate District Court rate. If an attorney submits a fee application for the additional time on remand in District Court, he or she must report the “Prior Total Fees and Expenses Allowed” on that fee application.

3. **Question:** Client is charged with a Class C felony and a DWLR at the same time. The Class C felony is indicted but the DWLR remains in District Court. The attorney appears in District Court several times solely on the DWLR to get it continued. The client ultimately pleads guilty to a Class C felony in Superior Court and, as part of the plea, the DWLR is dismissed. Does this require separate fee applications in District and Superior Court?

Answer: No. Because the DWLR was resolved as part of the plea to the Class C felony in Superior Court, both charges should be consolidated onto one fee application pursuant to Section I.E., above, and all time approved by the Superior Court Judge should be paid at the appropriate Superior Court rate.

4. **Question:** If a case starts out as a misdemeanor and, prior to the disposition of that charge, the client is subsequently charged with one or more felonies arising from the same incident, is the time spent prior to the felony charge paid at the misdemeanor rate or the applicable felony rate?

Answer: If the misdemeanor and the felony are disposed on the same day in front of the same judge, they should be consolidated onto one fee application and the applicable rate for all time would be based on the highest original charge. If the misdemeanor and the felony are not disposed on the same day in front of the same judge, the attorney should submit two fee applications and the applicable rate for each would be based on the highest original charge covered by that fee application.

5. **Question:** What happens if a client is indicted on a Class H felony and the District Attorney then indicts the client as a Class C habitual felon? Is this paid at the rate for Class H felonies or the rate for Class C felonies?

Answer: This should be paid at the rate for Class C felonies.

6. **Question:** What rate applies to drug trafficking charges? They are frequently a relatively low-level felony but, because of the mandatory minimum sentence provisions, they carry sentences that are comparable to higher-level felonies. This same question would also apply to other crimes which are sentenced at a higher level than the felony class.

Answer: The rate is dependent on the felony class, regardless of any mandatory minimum sentences.

7. **Question:** What rate applies to DWIs? These cases typically take far more work than other misdemeanors, whether tried in District or Superior, and can also carry sentences normally associated with felonies (up to 24 months). At what level are they paid?

Answer: DWIs resolved in either Superior or District Court should be paid at the same per hour rate listed on the ncids.org rate chart.

8. **Question:** What is the rate structure for a court-appointed Motion for Appropriate Relief (“MAR”) in Superior Court in a non-capital felony case? Does the rate depend on the felony of conviction or the original charge?

Answer: The MAR rate depends on the most serious conviction. For example, a non-capital post-conviction challenge to a misdemeanor conviction that is brought in District Court should be paid at the \$65 hourly rate, a non-capital post-conviction challenge to a Class E felony conviction that is

brought in Superior Court should be paid at the \$65 hourly rate, and a non-capital post-conviction challenge to a Class B1 felony conviction that is brought in Superior Court should be paid at the \$85 hourly rate if the date of disposition is January 01, 2022 or later.

9. **Question:** What date should District Court Judges use in determining the payment rate for contempt cases that do not arise out of a child support case? Does the July 1, 2011 date of work performed apply to non-child support contempt proceedings?

Answer: No, the July 1, 2011 work performed date only applies in child support contempt proceedings, and does not apply to other types of contempt. The reason is that child support contempt proceedings tend to last much longer and involve monthly review hearings.

10. **Question:** If the most serious original charge against a juvenile is a Class A through D felony, does the same hourly rate apply, or does the rate only apply when the defendant is an adult?

Answer: Yes, the same hourly rate applies to both adults and juveniles when the most serious original charge is a Class A through D felony.

If attorneys or court officials have additional questions or concerns about these policies or other billing matters, they should contact Whitney Fairbanks, IDS Assistant Director/General Counsel, at (919) 354-7200 or Whitney.B.Fairbanks@nccourts.org.