

OFFICE OF THE PARENT DEFENDER

The Office of the Parent Defender provides and promotes high quality legal representation for parents affected by the child welfare system (DSS) and parents facing contempt in child support and other civil proceedings.

Payment of Witnesses in Abuse/Neglect/Dependency (A/N/D) and Termination of Parental Rights (TPR) cases

- A. Of most importance, attorneys are not to pay witnesses directly. Any witness subpoenaed by a parent attorney must be paid directly by IDS (if an expert) or by AOC (if a fact witness). Further, IDS will not pay an expert witness unless there is a motion and court order ([AOC-G-309](#)) authorizing the payment consistent with IDS policy.ⁱ
- B. A/N/D and TPR Adjudication Hearings: In these types of hearings, the petitioner has the burden of proof, the Rules of Evidence apply, and no default hearings are permitted. There should never be a written report in lieu of testimony in these hearings unless agreed to by all parties.
- C. A/N/D Review and Permanency Planning Hearings: In these types of hearings, there is no burden of proof on any party and the Rules of Evidence are relaxed. Arguably, any party may submit a written report in lieu of testimony.ⁱⁱ If DSS or the GAL intends to present a written report from a service provider (therapist, treatment counselor, etc.) in lieu of testimony, the parent attorney should talk with the provider. Once you have discussed the report with the service provider, you may decide:
1. To request that the provider submit an addendum in lieu of appearing in court;
 2. That the provider needs to be subpoenaed as a fact witness; or
 3. That the provider needs to be subpoenaed as an expert witness.
- D. Payment of Fact Witnesses. You must balance the need for the provider to be in court, the need to fairly compensate a professional for their time and the need to protect the future working relationship of the service provider and your client. If there is sufficient reason to treat the provider as an expert witness, it may be worth ensuring payment at their hourly rate. On the other hand, you may decide that you won't take any steps to get the provider paid more than what AOC pays for a fact witness. In that case, you may want to develop a short letter to the provider informing them that they are being subpoenaed as a fact witness and refer to the language on the on the subpoena itself:
- “A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county to testify... After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify your attendance as a witness so that you will be paid any amount due you.”
- E. Payment of Expert Witnesses. If you determine that you want the provider to appear as an expert witness, consider filing a motion requesting that the court order that the costs be paid by the party desiring to enter the report as evidence in lieu of testimony, or in the alternative, that the costs be split. If the court refuses to require the other party to pay any costs for the appearance of an expert service provider, you may ask the court to order IDS to pay for the expert.

ⁱ See Experts at <https://ncparentdefender.org/parent-representation-forms/>

ⁱⁱ However, there must be some oral testimony taken at a permanency planning hearing. Reports alone are insufficient to support a court's findings of fact. *In re S.P.*, 267 N.C. App. 533 (2019) (vacating and remanding permanency planning order that was based solely on DSS and GAL reports without any testimony; attorney arguments are not testimony)