

PRIOR AUTHORIZATION REQUIRED TO INVESTIGATE OR LITIGATE A SUCCESSOR MOTION FOR APPROPRIATE RELIEF IN A CAPITAL CASE



Effective Date: 2024-08-09

IDS Policy:

Appointed counsel who seek to be compensated from IDS funds for investigating or litigating a successor Motion for Appropriate Relief (“MAR”) on behalf of a client who has been sentenced to death must seek pre-approval from the IDS Director. Appointed counsel shall seek preapproval by providing the following information to the IDS Director on a form (Link: [Request for Authorization-Successor MAR](#)) to be provided by the IDS Office:

- 1) A brief procedural history of the case, including any time constraints faced by counsel in conducting the investigation or initiating litigation;
- 2) A description of the potential legal and factual claims to be litigated, including a summary of any prior litigation in the case that may affect those claims;
- 3) A explanation of why counsel believes the successor would not be procedurally barred pursuant to N.C. Gen. Stat. 15A-1491; and
- 4) An estimate of the resources counsel expects to need in the investigation or litigation, including estimated attorney time and the number and type of experts.

The IDS Director shall grant approval upon a good faith showing that there are claims that warrant further investigation or litigation.

The IDS Director shall provide counsel with a written response to the request for pre-approval within 30 business days of receipt, unless counsel demonstrates a need for approval on a more expedited basis. The IDS Director’s written response may impose reasonable restrictions on the scope of the work to be done.

If the IDS Director determines that appointed counsel’s showing is insufficient to establish a good faith basis for believing that there are claims that warrant further investigation or litigation, the IDS Director may:

- 1) Direct that counsel provide further information; and/ or
- 3) Direct that counsel will not be compensated for services performed or expenses incurred.

Counsel who received approval to investigate or litigate a successor MAR prior to July 2019 need not re-apply for approval. Counsel who have not previously sought approval for investigation or litigation of a successor MAR should do so on or before October 1, 2024. If approval is not granted, IDS may elect to pay for reasonable work expended in the investigation or litigation of a successor

MAR during the period predating the adoption of this policy on August 9, 2024, subject to IDS Policy Number 04.01.07, Adverse Decision of Executive Director and Procedures for Review.

Attachment A – Policy History

| | |
|--------------------------|---|
| Policy Name: | PRIOR AUTHORIZATION REQUIRED TO INVESTIGATE OR LITIGATE A SUCCESSOR MOTION FOR APPROPRIATE RELIEF IN A CAPITAL CASE |
| Policy Number: | 04.01.07 |
| Custodian: | Deputy Director and General Counsel |
| Effective Date: | 2024-08-09 |
| Next Review Date: | 2028-01-01, unless reviewed earlier |
| Location: | IDS Policies, Rules & Procedures - Indigent Defense Services (ncids.org) |
| Revision History: | Policy adopted August 16, 2010 and updated July 19, 2012. Applies to successor investigation or litigation initiated on or after August 16, 2010. Does not apply to claims that were pending in a successor motion for appropriate relief on August 16, 2010, but applies to any new claims that are included in a successor motion or an amended successor motion filed on or after that date. Does not apply to motions that were amended because of the amendments to the Racial Justice Act in Session Law 2012-136. Policy rescinded on July 12, 2019. Policy revised and reinstated August 9, 2024. |
| Authority: | G.S. 7A-451(d); 7A-498.3(c) and (d); 7A-498.5(f). |

