

IDS

OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

August 22, 2025 Quarterly Commission Meeting

Meeting Material

Commission on Indigent Defense Services

August 22, 2025

Proposed Agenda	10:00 AM – 3:00 PM
Call to Order	Bryan Jones
Introductions	
Adoption of Proposed Agenda	
State Government Ethics Act Reminder	
<i>Members of the commission/committee are hereby advised of their duty under the State Government Ethics Act to avoid conflicts of interest & the appearance of conflict & are instructed to refrain from participating in any matter coming before this commission/committee with respect to which there is a conflict of interest or appearance of conflict</i>	
Minutes of May 2, 2025, Commission Meeting	
Remarks from the Chair	Bryan Jones
Thank Commissioner Dorothy Hairston Mitchell for Service to Commission	
Welcome New Chief and State Public Defenders Thomas L. “Bud” Woodrum and Annick Lenoir-Peek	
Thank Wendy Sotolongo and The Honorable Dorothy Hairston Mitchell	
Remarks from the Director	
Welcome Dr. Joshua Hummel, IDS Data Analyst	Mary S. Pollard
Updates on Changes in Law and Practice	
Changes in Guardianship	Timothy Heinle
Director’s Report	Mary S. Pollard
Report on Legislative Long Session	
IDS Strategic Plan	Aaron Gallagher
Commission Business	Bryan Jones
IDS Commission Appointment (G.S. 7A-498.4(b)(11) (Karen Franco and Dorothy Hairston Mitchell Seats)	
Development Committee	
Budget Committee – Revisions to Rules for the Delivery of Service, Part 1 and Billing Policies	
Executive Session the Commission shall meet in closed session as allowed by G.S. 143-318.11(a)	
(3) [t]o consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged.	
(6) [t]o consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or	

prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee

Adjournment

Bryan Jones

Next Meeting: November 21, 2025 (Location to be determined)



MARY POLLARD

EXECUTIVE DIRECTOR
MARY.S.POLLARD@NCCOURTS.ORG

OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

BRYAN JONES

CHAIR

NCIDS.org

Memorandum

To: IDS Commissioners
Cc: IDS Director
From: Whitney Fairbanks, IDS Deputy Director/General Counsel & Designated Ethics Liaison
Re: State Government Ethics Act and Lobbying Laws¹
Date: Updated October 2021

This memo is intended to summarize the main aspects of the Election and Ethics Enforcement Act that impact individuals who serve on the Commission on Indigent Defense Services.¹

I. STATE GOVERNMENT ETHICS ACT

A. COVERAGE AND DEFINITIONS:

The State Ethics Act went into effect on October 1, 2006, and applies to all “covered persons” as of January 1, 2007². “Covered persons” include the following:

- “Judicial officers”: All Justices and Judges of the appellate and trial courts, District Attorneys, and Clerks of Superior Court, or any person elected or appointed to any of these positions prior to taking office. G.S. 138A-3(21).
- “Judicial employees”: The Director and Assistant Director of the Administrative Office of the Courts, and any other Judicial Branch employees who earn at least \$60,000 per year and are designated by the Chief Justice as a judicial employee. 138A-3(42).
- “Public servants”: Judicial employees and voting members of public boards or commissions with more than advisory authority. G.S. 138A-3(3) & (70)i.

So, all members of the IDS Commission are “covered persons” under the Act’s definition of

¹ This memo is a revision of one originally drafted by Danielle Carman in January of 2008, which was drawn in large part from a Memorandum titled “State Ethics Act—Effective January 1, 2007,” which was authored by Pamela Weaver Best, AOC Deputy Legal Counsel, and distributed to judicial officials on December 15, 2006, as well as materials distributed at an October 11, 2006 North Carolina Academy of Trial Lawyers CLE titled “Ethics and Lobbying: The New Statute.”

²Effective December 18, 2018, the North Carolina General Assembly recodified Chapter 163A, Elections and Ethics Enforcement Act, into Chapter 138A, State Government Ethics Act. See S.L. 2018-46.

“public servants.”³ To date the Chief Justice has not designated any IDS employees as “judicial employees.” Chief Justice Martin also has not designated any IDS employees as “judicial employees.” Thus, the IDS Director, Appellate Defender, Capital Defender, Juvenile Defender, Parent Defender, Special Counsel Supervising Attorney, and Chief Public Defenders are not subject to the Act.

B. SPECIAL DUTIES OF THE IDS DIRECTOR AND IDS COMMISSION CHAIR:

The head of each State agency, and Chair of each board or commission subject to the Act, have special obligations that are set forth in G.S. 138A-15, such as:

- At the beginning of each IDS Commission meeting, the IDS Commission Chair must remind the members of their duty to avoid conflicts of interest or the appearance of conflicts of interest, and must inquire of members whether there is a possible conflict with any issue coming before the Commission. G.S. 138A-15(e).
- The IDS Director and IDS Chair must notify the Ethics Commission of all new public servants or other officials who are covered by the Act, and provide those public servants or officials with copies of the Ethics Act and any necessary disclosure forms. 138A-15(h).
- The IDS Director and IDS Chair must consider the need for the development and implementation of in-house ethics educational programs, procedures, or policies. 138A15(g).

C. OBLIGATIONS OF PUBLIC SERVANTS:

1. Annual Statements of Economic Interest:

All members of the IDS Commission (and anyone who may be designated in the future as a “judicial employee” by the Chief Justice) must file an annual Statement of Economic Interest (“SEI”) with the North Carolina Ethics Commission by April 15. Because all of the information in each year’s SEI must be current as of the last day of December of the preceding year, a SEI cannot be filed prior to January 1 of the filing year. G.S. 138A-22(d). All SEIs are public records. G.S. 138A-23.

³ This memo describes the obligations of an IDS Commissioner as a “public servant” under the Act. It does not describe any additional or different obligations of “judicial officers.” IDS Commissioners who are also judges should receive information and training about their obligations as “judicial officers” directly from the AOC and North Carolina Ethics Commission.

The SEI form requires reporting of your ownership or interest in certain assets and businesses as of December 31 of the prior year, including:

- Real estate, including personal residence;
- Interests in public or private corporations or other businesses;
- Vested trusts created, established, or controlled by the filing person; and
- All liabilities, excluding indebtedness on a personal residence.

See G.S. G.S. 138A-24 and the SEI long form for the full contents of the required disclosure. The Ethics Commission has instructed filers not to leave any questions blank or the form will be returned and the filer may be subject to a fine or sanction; if the answer to any question is “none,” the filer should write “none.”

The Ethics Commission has a duty to evaluate SEIs on a biennial basis and issue written opinions about the existence or lack of conflicts of interest and potential conflicts of interest. G.S. 1385-24(e). If the Ethics Commission cites an actual or potential conflict of interest with regard to any member of the IDS Commission, the conflict must be recorded in the Commission minutes and brought to the attention of the Commission by the Commission Chair. G.S. 138A-15(c).

All new IDS Commission appointees must file a SEI and have it evaluated by the Ethics Commission before their initial appointment can be effective. G.S. 138A-22(a). The only exception is that a public servant who serves on more than one board may file one SEI and, if that public servant begins membership on another covered board during the biennial cycle, s/he is not required to file another SEI and the Commission is not required to evaluate the existing one again.

Any public servant who fails to file the required SEI will be notified by the Commission within 30 days of the due date, with a copy to the designated ethics liaison. If the public servant fails to file the SEI within 30 days of receipt of the late notice, he or she will be subject to a \$250 fine. If the public servant fails to file the SEI within 60 days of receipt of the late notice, he or she will be subject to disciplinary action. G.S. 138A-25(b).

It is a Class 1 misdemeanor knowingly to conceal or fail to disclose required information on a SEI. G.S. 138A-26. It is a Class H felony knowingly to provide false information on a SEI. G.S. 138A-27.

2. Mandatory Ethics Education:

As public servants, all members of the IDS Commission are required to receive ethics education within six months of their appointment, and must receive refresher education every two years thereafter. The Act also requires the designated ethics liaison to receive that education. G.S. 138A-14(c) & (f). Unless the Chief Justice designates any IDS employees as “judicial employees” in the future, no other IDS staff members are subject to this requirement.

The Ethics Commission has developed an educational program that satisfies the ethics education and the lobbying education requirements. See Section II.B. below. The combined program is about 2 hours long. The Commission has also developed an on-line training program that satisfies

these requirements, which is available at <http://www.ethicscommission.nc.gov/education/eduOnline.aspx>.

3. Ethical Standards:

Public servants and other covered persons shall not knowingly use their public position in a manner that will result in a financial benefit to the person, a member of the person's extended family, or a business with which he or she is associated. G.S. 138A-31(a).

Public servants and other covered persons "shall not mention or permit another person to mention the covered person's public position in nongovernmental advertising that advances the private interest of the covered person or others. The prohibition . . . shall not apply to political advertising, news stories, news articles, the inclusion of a covered person's position in a directory or biographical listing, or the charitable solicitation for a nonprofit business entity . . ." G.S. 138A-31(b).

In addition, public servants must protect against conflicts of interest by continually monitoring their financial, personal, and professional interests. G.S. 138A-35(b). Public servants must also refrain from taking any official action, up to and including abstaining from voting, if the public servant or a person with whom the public servant is associated "may incur a reasonably foreseeable financial benefit from the matter under consideration" and that benefit "would impair the public servant's independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the public servant's participation in the official action." G.S. 138A-36(a) & (b). If the public servant is unsure whether there is a conflict, the public servant should disclose the relationship to the person presiding over the proceeding and seek appropriate guidance. G.S. 138A-35(a) and 138A-36(d).

Recusal is the stated way of avoiding conflicts of interest. G.S. 138-36. However, otherwise disqualified covered persons are allowed to participate in official actions if the interest or reasonably foreseeable benefit accrues equally to all members of the particular profession, occupation, or general class. G.S. 138A-38(a)(1). It has been the IDS staff's belief that the exception in 138-38(a)(1) allows Commissioners who are also private appointed counsel to take part in official actions that impact payments to private attorneys in indigent cases, such as changes in the hourly rates. On May 22, 2008, the State Ethics Commission issued an advisory opinion, which provides that Commissioners who are also private appointed counsel may take part in official actions that impact payments to private attorneys in indigent cases, such as changes in the hourly rates private attorneys, under the "safe harbor" in 138-38(a)(1).

4. Gifts:

A covered person "shall not knowingly, directly or indirectly, ask, accept, demand, exact, solicit, seek, assign, receive, or agree to receive anything of value for the covered person . . . or for another person, in return for being influenced in the discharge of the covered person's . . . official responsibilities." G.S. 138-32.

Covered persons “may not solicit for a charitable purpose any gift from any subordinate State employee.” This ban does not apply if the solicitation is a generic request to all employees, such as requests to contribute to the State Employees Combined Campaign. G.S. 138A-32(b).

In addition, public servants shall not “knowingly accept a gift, directly or indirectly, from a lobbyist or lobbyist principal registered under Article 8 of [Chapter 163A]. G.S. 138A-32(c). Nor may a public servant “knowingly accept a gift, directly or indirectly, from a person whom the public servant knows or has reason to know any of the following:

- (1) Is doing or is seeking to do business of any kind with the public servant’s employing entity.
- (2) Is engaged in activities that are regulated or controlled by the public servant’s employing entity.
- (3) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of the public servant’s official duties.”

G.S. 138A-32(d). Prohibited gifts must be declined, returned, paid for, or donated to charity or the State. G.S. 138-32(g).

There are a number of exceptions to the gift ban that permit public servants to accept food and beverages for immediate consumption at public events (such as IDS Commission meetings), reasonable actual expenditures for educational programs or meetings, and plaques or non-monetary recognition mementos. G.S. 138A-32(f).

In addition, 138A-32(f)(10) provides that the gift bans in G.S. 138A-32(c) and (d) do not apply to “[g]ifts given or received as part of a business, civil, religious, fraternal, personal, or commercial relationship not related to the person’s public service or position and made under circumstances that a reasonable person would conclude that the gift was not given for the purpose of lobbying.”

5. Honoraria:

Covered persons shall not accept an honorarium for “conducting any activity where any of the following apply:

- (1) The employing entity reimburses the covered person . . . for travel, subsistence, and registration expenses.
- (2) The employing entity’s work time or resources are used.
- (3) The activity would be considered official duty or would bear a reasonably close relationship to the covered person’s . . . official duties.

An outside source may reimburse the employing entity for actual expenses incurred by a covered person . . . in conducting an activity within the duties of the covered person . . . or may pay a fee to the employing entity, in lieu of an honorarium, for the services of the covered person . . .” G.S. 138A-32.

6. Other Compensation or Benefits:

Public servants and other covered persons “shall not solicit or receive personal financial gain” for acting in the public servant’s official capacity or for advice or assistance given in the course of official duties. G.S. 138A-33.

In addition, covered persons shall not cause a member of the covered persons’ extended family to be hired or appointed to a position over which the covered person has supervisory authority. G.S. 138A-40.

D. ADVISORY OPINIONS FROM THE ETHICS COMMISSION:

The Ethics Commission has authority to render advisory opinions if requested by a public servant or other covered person. G.S. 138A-13(a). A person who seeks an opinion is immunized from sanctions when he or she acts in accordance with an advisory opinion. G.S. 163A-157.

E. DESIGNATED ETHICS LIAISON:

Each agency is required to designate someone on staff as the ethics liaison to advise public servants of their duties under the law and maintain communication with the Ethics Commission. G.S. 138A-13(f). (IDS has designated the IDS Deputy Director/General Counsel to serve as our ethics liaison.

F. VIOLATIONS, INQUIRIES BY THE ETHICS COMMISSION, AND ACTION ON COMPLAINTS:

The Ethics Commission can accept complaints, investigate, and conduct hearings on alleged violations by public servants. If the Commission finds by clear and convincing evidence that a public servant has violated the Act, the Commission may issue a private admonishment or refer the matter for appropriate action to the entity that appointed or employed the public servant. The Commission can also refer criminal matters to the Attorney General and local district attorney. G.S. 138A-12(m)(1).

Willful violations of the Act by board members constitute malfeasance, misfeasance, and nonfeasance subjecting the person to removal from the board. Willful violations by State employees constitute a violation of a written work order that could lead to dismissal.

II. AMENDED LOBBYING LAWS:

A. COVERAGE AND DEFINITIONS:

In varying degrees, the lobbying laws apply to numerous individuals as defined by G.S. 120C-100:

- “Designated individuals”: Those subject to being lobbied, including legislators, legislative employees, and public servants (as defined above).

- “Liaison personnel”: Any state employee whose principal duties, in practice or as set forth in his or her job description, include lobbying legislators or legislative employees.
- “Lobbyist”: Does not include designated individuals who are acting in their official capacity or individuals registered as liaison personnel.
- “Lobbying”: Includes direct lobbying and goodwill lobbying.

Except for any person designated as a liaison personnel under G.S. 120C-500, the provisions of Article 8 of Chapter 163A do not apply to state employees when appearing solely in connection with matters pertaining to their office and public duties. G.S. 120C-700(3). Article 8 of Chapter 1163A also does not apply to any person appearing before a committee, commission, board, or council at the invitation or request of the committee or a member thereof. G.S. 120C-700(2)

B. OBLIGATIONS OF PUBLIC SERVANTS: LOBBYING EDUCATION:

As public servants, all members of the IDS Commission are required to receive lobbying education and awareness training within six months of their appointment, and must receive refresher education every two years thereafter. G.S. 120C-103(a). Any IDS employee who may be designated by the Chief Justice in the future as a “judicial employee” will also become subject to this requirement.

C. ADDITIONAL OBLIGATIONS OF LIAISON PERSONNEL:

Every State agency must designate at least one and no more than two liaison personnel to lobby for legislative action. G.S. 120C-500. Subsection (d) provides that the Chief Justice shall designate “at least one, but no more than four, liaison personnel to lobby for legislative action for all offices, conferences, commissions, and other agencies established under Chapter 7A of the General Statutes.” In March 2009, the Chief Justice designated the IDS Director as one of the four liaison personnel for Chapter 7A agencies.

Liaison personnel are generally exempt from the lobbying laws, but are subject to the registration, reporting, and gift ban provisions of Article 8 of Chapter 163A. G.S. 120C-501.

Violations of the registration and reporting provisions are generally Class 1 misdemeanors and may subject the violator to civil fines. G.S. 120C-602.

1. Registration:

Annually, liaison personnel must file with the Secretary of State a Liaison Registration form and a State Agency Authorization Statement. No registration fee shall be required. G.S. 120C-200 and 120C-501(b).

2. Reporting:

Liaison personnel must file quarterly lobbyist reports with the Secretary of State under G.S. 120C-402. G.S. 120C-501. “The report shall include all of the following for the reporting period:

- (1) All reportable expenditures made for the purpose of lobbying.

- (2) Solicitation of others when such solicitation involves an aggregate cost of more than three thousand dollars (\$3,000).
- (3) Reportable expenditures reimbursed by the lobbyist's principal, or another person on the lobbyist's principal's behalf.
- (4) All reportable expenditures for gifts given G.S. 138A-32(f)(1)-(9), 138A-32(f)(11), 138A-32(f)(12), and all gifts given under G.S. 138A-32(f)(10) with a value of more than ten dollars (\$10.00)."

In addition, if the liaison personnel incurs reportable expenditures in any month while the General Assembly is in session, the liaison personnel shall file a monthly reportable expenditure report.

3. Gifts:

The gift ban in G.S. 120C-501) applies to liaison personnel with respect to legislators and legislative employees. G.S. 163A-346(e). Subject to the gift exceptions in G.S. 138A-3(32), liaison personnel may not directly or indirectly give a gift to a legislator or legislative employee.

However, liaison personnel may make political contributions to legislators. G.S. 138A3(32) defines a "gift" for purposes of the State Government Ethics Act as anything of monetary value given or received without valuable consideration by or from a lobbyist, lobbyist principal, liaison personnel, or a person described under G.S. 138A-3(d)(1), (2), or (3). However, pursuant to G.S. 138A-3(3), campaign contributions that are properly received and reported as required under Article 23 of Chapter 163A are not gifts. In addition, while G.S. 163-278.13B provides that no lobbyist may make a campaign contribution as defined in G.S. 163-278.6 to a candidate who is a legislator, G.S. 120C-100 provides that the term "lobbyist" shall not include registered liaison personnel.

D. LIMITATION ON IDS COMMISSION APPOINTMENT OF LOBBYISTS:

There are limitations on the ability of the IDS Commission to appoint lobbyists or recent lobbyists as one of the Commission's three appointees to the IDS Commission. G.S. 120C-304 has been amended to provide: "A lobbyist shall not be eligible for appointment by a State official to, or service on, any body created under the laws of this State that has regulatory authority over the activities of a person that the lobbyist currently represents or has represented within 120 days after the expiration of the lobbyist's registration representing that person." Any appointment made in violation of this section is void. G.S. 120C-304

E. NO STATE AGENCY MAY CONTRACT WITH A LOBBYIST:

G.S. 120C-500 provides that "[n]o State agency or constitutional officer of the State may contract with individuals who are not employed by the State to lobby legislators and legislative employees. This subsection shall not apply to counsel employed by any agency, board, department, or division authorized to employ counsel under G.S. 147-17."

III. FORMS & QUESTIONS:

- The following link is to the North Carolina Ethics Commission website: <http://www.ethicscommission.nc.gov>. The annual Statement of Economic Interest forms, including the long form and no change form, can be accessed at that site.
- For general questions about your obligations under Subchapter II of the State Elections and Ethics Enforcement Act (formerly the State Ethics Act) as a member of the IDS Commission, please contact:
 - Whitney B. Fairbanks, IDS Deputy Director/General Counsel & Designated Ethics Liaison, at (919) 354-7205 or Whitney.B.Fairbanks@nccourts.org; or
 - Kathleen Edwards, Associate General Counsel, State Board of Elections and Ethics Enforcement at (919) 814-3600 or Ethics.Commissions@ncsbe.gov.
- For questions about the Statement of Economic Interest, please contact Lisa Johnson, Disclosure and Reporting Manager, State Board of Elections and Ethics Enforcement, at (919) 814-3600 or lisa.johnson@ncsbe.gov.

For questions about the mandatory ethics education, please contact Sue Lundberg, Associate General Counsel, State Board of Elections and Ethics Enforcement, at (919) 8143600 or sr.lundberg@ncsbe.gov



NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES

MARY POLLARD

EXECUTIVE DIRECTOR
MARY.S.POLLARD@NCCOURTS.ORG

OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

BRYAN JONES

CHAIR

NCIDS.org

To: Members of the Commission on Indigent Defense Services

Re: Reimbursement of Expenses

Thank you for donating your valuable time to serve on the IDS Commission.

Reimbursable Expenses

Upon request, IDS will reimburse all Commissioners for the following expenses associated with your attendance at IDS Commission meetings:

1. Mileage to and from your place of business and the Commission meeting location (currently at \$.625 per mile);
2. Parking if a receipt is provided; and
3. The actual cost of any overnight lodging, not to exceed \$89.10 plus actual taxes incurred, if a valid hotel receipt is provided.

In addition, Commissioners who are not state employees may claim a \$15 per diem for each day of official service. See G.S. 7A-498.4(j) and 138-5(a)(1). Beginning January 1, 2017, the IRS considers all non-state employee commission and board members who receive a stipend or per diem to be employees for employment tax purposes. This means per diem payments will be considered income subject to income tax and social security/Medicare tax withholding. If you request a per diem, IDS will enter you in the HR-Payroll system as a temporary employee and you will receive a W-2 rather than a 1099 at year end. This change only affects per diem payments and does not affect reimbursement payments for mileage, parking, or lodging. If you choose to waive the "temporary employee" compensation, you will need to complete the attached waiver.

There will be no charge for lunches provided to Commissioners who RSVP in advance. Instead, IDS staff have established a way to pay for Commissioner meals that are preplanned as part of a Commission meeting, and then get reimbursed for all meals directly.

Reimbursement Procedure

To claim your expense reimbursement, please complete the attached form (AOC-A-25) and mail or fax it to the following address within 30 days of the Commission meeting:

Office of Indigent Defense Services
Attn: Cati Rosu
123 W. Main St., Suite 400
Durham, NC 27701
Fax: 919.354.7201

A fillable version of the form is available at:

<http://www.nccourts.org/Forms/Documents/1028.pdf>.

Upon receipt, we will approve reimbursement and forward the form to our Financial Services Division for payment. Please indicate at the top of the form if you are not a state employee.

**STATE OF NORTH CAROLINA
Judicial Branch
Indigent Defense Services**

**REIMBURSEMENT OF TRAVEL AND
OTHER EXPENSES INCURRED IN THE
DISCHARGE OF OFFICIAL BUSINESS**

G.S. 138-6

INSTRUCTIONS: Forward the completed form (remove any blank pages) and all receipts/supporting documents (itemized hotel receipt, registration, parking receipts, advance approval, etc.) to ids.employee.reimbursements@nccourts.org in a single email. Include your first name, last name, and "travel" in the subject line of the email.

ATTESTATION REQUIRED

A state-owned vehicle is unavailable, the mileage rate of \$.625 per mile applies.
_____ (Supervisor Initials)

A state-owned vehicle is available, a private vehicle is being used by choice, the mileage rate of \$.33 applies.
_____ (Supervisor Initials)

- | | |
|--|---|
| <input type="checkbox"/> Office of Special Counsel | <input type="checkbox"/> Public Defender's Office |
| <input type="checkbox"/> IDS Staff | |
| <input type="checkbox"/> Capital Defender | _____ (Defender District) |
| <input type="checkbox"/> Appellate Defender | |
| <input type="checkbox"/> Juvenile Defender | |

Payee's Name And Address <input type="checkbox"/> Check If Name Or Address Change	Position/Title	Headquarters (city)	
	Personnel No. (top of paystub)	Travel For (month and year)	Date Request Prepared

Under penalties of perjury, I certify this is a true and accurate statement of the city of lodging, expenses, and allowances incurred in the service of the State. If Federal GSA standard lodging rates are used, I affirm that I complied with the policy criteria for such rates.	I have examined this reimbursement request and certify that it is just and reasonable.	Total Cost	\$	\$ 0.00
	Signature/e-Signature Of Supervisor	Less Advance	\$	\$ 0.00
Signature/e-Signature Of Claimant	Name Of Supervisor	Reimbursement	\$	\$ 0.00

FOR USE BY IDS FINANCIAL SERVICES DIVISION

COMPANY	ACCOUNT	CENTER	AMOUNT	Date
	532714			Verified And Approved For Payment:
	532721			
	532724			

TRAVEL (show each city visited)			TRANSPORTATION			SUBSISTENCE			OTHER EXPENSES	
Day	From	To	(1) Mode	Daily Private Car Mileage	Amount	(2) Type	In-State	Out-of-State	Explanation	Amount
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
	Category Totals For This Day:				\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
	Category Totals For This Day:				\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00
CATEGORY TOTALS:					Transport.		In-State	Out-of-State		Other Exp.
					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00

- | | | | |
|-------------------------|--------------------------|----------------|-----------------|
| (1) Mode of Travel: | (2) Type of Subsistence: | In-State | Out-of-State |
| P - Privately-owned car | B - Breakfast | \$ 10.10 | \$ 10.10 |
| A - Air | L - Lunch | \$ 13.30 | \$ 13.30 |
| B - Bus | D - Dinner | \$ 23.10 | \$ 26.30 |
| R - Rail | H - Hotel | \$ 89.10 + Tax | \$ 105.20 + Tax |
| | 24-hr. period | \$ 135.60 | \$ 154.90 |

Check List: (1) Claimant and supervisor signature
 (2) Depart and return times required + overnight status to claim meals
 (3) Must have itemized hotel receipt, credit card receipt not accepted.

NOTE: Purpose of trip must be noted, please indicate purpose of trip under city visited.

Payee's Name

Personnel No.

TRAVEL (show each city visited)			TRANSPORTATION			SUBSISTENCE			OTHER EXPENSES	
Day	From	To	(1) Mode	Daily Private Car Mileage	Amount	(2) Type	In-State	Out-of-State	Explanation	Amount
TOTALS BROUGHT FORWARD:					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
Category Totals For This Day:					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
Category Totals For This Day:					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
Category Totals For This Day:					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
Category Totals For This Day:					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
Category Totals For This Day:					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00
			P			B				
			A			L				
	Purpose of Trip:		B			D				
	Depart Time:	Return Time:	R			H				
Category Totals For This Day:					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00
CUMULATIVE CATEGORY TOTALS:					Transport.		In-State	Out-of-State		Other Exp.
					\$ 0.00		\$ 0.00	\$ 0.00		\$ 0.00

VOLUNTARY WAIVER OF PER DIEM

Indigent Defense Services Commissioners who are not state employees may claim a \$15 per diem for each day of official service. See G.S. 7A-498.4(j) and 138-5(a)(1). Beginning January 1, 2017, IDS is required to report Commissioner per diem fees to the Internal Revenue Service as income. (If you have any questions about the tax issues related to per diem payment as a Commissioner, consult a financial professional.)

WAIVER

I hereby waive payment of per diem fees as set forth in G.S. 7A-498.4(j) and 138-5(a)(1) for my services on the Indigent Defense Services Commission. I understand this waiver will continue in effect for all services related to IDS Commission business including Commission and Commission Committee meetings until such time as I submit a written revocation of this waiver to Indigent Defense Services.

Name of Commissioner

Date

Signature of Commissioner

Draft Minutes

2025.05.02 Meeting Minutes

Commission on Indigent Defense Services

For Review at the Quarterly Meeting – August 22, 2025

Adoption of the Agenda

Commissioner Attendees:

Bryan Jones (Chair), Miriam Thompson (Vice-Chair), Tonya Davis Barber, Cara Bridges, Robert K. Corbett III (*virtual*), George Doyle, Marshall Ellis (*virtual*), Caitlin Fenhagen, The Honorable Dorothy Hairston Mitchell, John Nieman, Stacey Rubain, The Honorable Scott Ussery

IDS Staff Attendees:

Chad Boykin (Assistant General Counsel, Financial Services), Amanda Bunch (Communications Specialist), Tucker Charns (Regional Defender), Whitney Fairbanks (Deputy Director/ General Counsel), Aaron Gallagher (Finance Officer), Angela Henderson (Contracts Administrator), Joseph Oder (Senior Research Analyst), Sarah R. Olson (*virtual*) (Forensic Resource Counsel), Mary S. Pollard (Executive Director), Christopher Sadler (Research Director), Max Silva (Legal Assistant), Rebecca Whitaker (Defender Policy and Planning Attorney)

Local and State Public Defender Program Attendees:

Ricky Champion (District 17), Niccoya Dobson (*virtual*) (District 5), A. Traynham Dorn (District 13), Jason DeHoog for Laura Gibson (*virtual*) (District 2), Yolanda Fair (*virtual*) (Assistant Juvenile Defender), Robert Kemp III (District 3), J. Chad Perry (Chief Special Counsel), Jennifer Rierson (District 24), Wendy Sotolongo (Parent Defender), Jacob Ward (*virtual*) (District 15), Thomas L. “Bud” Woodrum II (District 6), Eric Zogry (Juvenile Defender)

Other Attendees:

Jackie Parker (OSBM), Beth Hopkins Thomas (NCPLS), James “Jimbo” Perry (NCSC Chief Justice’s Commission on Professionalism), Phil Dixon (UNC School of Government)

Call to Order and Introductions

The meeting was called to order at 1:24 p.m. by IDS Commission Chair Bryan Jones, who then proceeded with the welcome. (Note: Commissioners had previously held an executive session beginning at 10 a.m. that morning to interview candidates for the position of State Parent Defender.)

The agenda was adopted unanimously.

State Government Ethics Act

Chair Jones reminded the Commissioners of their responsibilities under the State Government Ethics Act.

Minutes of February 7, 2025, Commission Meeting

The minutes from the February 7, 2025, IDS Commission meeting were approved.

Director's Report

Executive Director Mary Pollard began her report with “shoutouts” to **Bob Trbovich**, a PAC attorney out of Mecklenburg County, who regularly steps up on challenging cases. Director Pollard said he is one of many dedicated PAC who consistently goes above and beyond. She also thanked **Commissioner John Nieman**. Not only does he serve on the Commission, but he is the retired chief public defender for Guilford County, and he recently joined the PAC roster for Stokes County—despite “trying to retire.”

Legislative Update – Director Pollard shared highlights from the proposed Senate budget. At that time, the Senate budget included one new public defender office for Rockingham County as well as \$25 million in non-recurring funds over the biennia for the PAC fund, which may enable the IDS Commission to raise rates for some targeted PAC. At the time of the meeting, she was not sure when the House budget would be finalized, and she expected a continuing budget, come July 1.

Mention of HB 953 – Director Pollard directly named Rep. Carson Smith, Rep. Laura Budd, and Rep. Terry Brown, who are calling for a Legislative Study Commission to look at salary and benefits for district attorneys, public defenders and private assigned counsel. She said she planned to speak in support of this study at the General Assembly.

Update on Set-off Debt – For newer commissioners and as a reminder to longer serving commissioners, Chief Fiscal Officer Aaron Gallagher defined “Set-off Debt” as the means by which the Department of Revenue intercepts tax returns and lottery proceeds from individuals that have civil judgements against them as a result of being represented by a public defender or court appointed lawyer. He provided for information the Set-off Debt year-to-date receipts to the Commission, stating that revenues from Set-off Debt at that point in time were “strong.”

He said told the Commission there is a statutory notice requirement “issue” for IDS to send notices to the affected taxpayers w/n 30 days of receipt of the funds. IDS’s ability to do this in a timely manner has been complicated by Odyssey/Enterprise Justice (“EJ”) in EJ counties. He said IDS is working to get a “safe harbor provision” for the time period affected.

Director Pollard said the provision would require legislative action, and IDS staff are currently working on ways to ensure that happens.

Gallagher said that while IDS staff have figured out a way to get the notices out, the process is still “touch and go” and it takes a lot of work to meet the statutory deadline. “We are hopeful that by January 1, 2026, we will have a way to fix the current problems caused by the current module,” he added. And IDS staff plan to pitch a potential solution to the issue to leadership at the NC Administrative Office of the Courts for their approval.

Brief Update on the PAC Fund – The picture was not as bleak as was previously reported. Gallagher shared the revised FY2025 PAC Projections. He expressed gratitude to the General Assembly for allocating \$8.2 million in non-recurring funds to IDS for the PAC Fund. Those extra funds combined with the YTD Set-off Debt collections have improved the end-of-year forecast for the PAC Fund. He said receipts are up, and if revenues continue to be greater than anticipated, the projections might improve. If not, he said, the picture could stay the same.

The YTD PAC expenditure was \$77 million, with the expectation to spend another \$16 million before the end of the fiscal year. This was on pace with where the agency's spending was at this time last year. Gallagher said that new PD offices are siphoning off demand from PAC, and he was optimistic it will come in under \$93 million in expenditures for the end of FY2025.

He anticipated being able to pay PAC into June. "This is a great testament to being able to find revenue, collect revenue, and get the new public defender offices staffed and up and running," he said. "We don't want to have to stop PAC payments, but we will most likely stop payments from June 15 through July 1."

Commissioner Tonya Davis-Barber agreed, adding that historically, when IDS had to stop PAC payments, it needed to be done as early as March/third quarter. That IDS can pay into June and resume normal payments (under a continuing budget resolution) as soon as the start of the new fiscal year was very good news.

Remarks from the Chair

The Chair recognized **Chief Public Defender Robert C. Kemp III** of Judicial District 3 (Pitt County) for being named the recipient of the **John B. McMillan Distinguished Service Award** in December 2024.

Commission Business

Rules and Billing Policies for Non-Capital, Non-Criminal Cases at the Trial Level – The IDS Rules were originally adopted and last revised in 2002 and 2004, respectively. Along with IDS Assistant Director/General Counsel Whitney Fairbanks and IDS Assistant General Counsel Chad Boykin, Executive Director Pollard and the two have drafted revisions to the IDS Rules and Billing Policies. Plans are to convene the Budget Subcommittee for its input. Once the Budget Subcommittee is satisfied with the revisions, the draft will be circulated to the Commission in time for review and feedback before the August 22 meeting. The goal is for the revised Rules to "reflect the reality of practice in 2025 and the reality of IDS operations in 2025."

There are two major changes:

- (1) OASIS will be statewide by the end of the current calendar year.** Since OASIS guarantees payment within 30 days of billing, in return, IDS will adopt a policy to require that **attorneys bill within 90 days of the disposition of the case.** This is critical for IDS to monitor cash flow and to be able to identify instances of overbilling.
- (2) Attorneys must keep time records to back up their fee apps,** and those records must be released to IDS if ever audited. A fuller discussion on that is anticipated at the August 22 IDS Commission meeting.

Development Subcommittee – The Development Subcommittee was asked to expand the intern program for public defender offices for the summer of 2026, offering some compensation for law school students so they do not go without income as they intern in PD offices across the state.

Policy and Planning Subcommittee – The Policy and Planning Subcommittee must update and resubmit the Strategic Plan (Aaron Gallagher and the Fiscal Team were to lead this effort). It will be due in September.

Revisions to the Uniform Appointment Plan – The idea to strike the jury trial requirement for attorneys to join the (List 2) low-level felonies and probation violation rosters, was brought before the Commission as an action item by Executive Director Pollard. It was suggested to her by a lawyer/Legislator who wants the best for IDS. Pollard added it will be paramount for IDS to ensure local bar associations are aware of the training and resources IDS can and does provide for free.

Instead, the recommendation would be to require that attorneys must observe at least one jury selection and one jury instruction.

Commissioner Tonya Davis Barber suggested to also require training for jury trials—that List 2 attorneys *either* have jury trial experience *or* undergo a jury trial CLE.

Commissioner Dorothy Hairston Mitchell agreed, stating that jury experience is *critical* to success in getting the best possible outcomes for clients in the courtroom.

Executive Director Pollard emphasized the training needs to be a “free and readily available jury module. And she included IDS Regional Defender Tucker Charns’ offering and affirmation that IDS could and would develop some jury training for this purpose.

Commissioner Scott Ussery made the motion to approve the change and make it required to “EITHER *observe* one Jury Trial OR *contact IDS* for jury trial training—which will be free and readily available, and which IDS will provide.” The motion was seconded by Commissioner John Nieman and passed unanimously. (Note: Commissioner Cara Bridges and Vice-Chair Miriam Thompson had stepped out of the room at the time of the vote.)

Waiver of One Year Deadline for Fee Applications – Assistant General Counsel Chad Boykin brought two waiver applicants for consideration by the IDS Commission.

(1) For the first applicant, Commissioner Ussery moved to decline payment, which was seconded by Chair Bryan Jones. Commissioners Ussery, Jones and Doyle voted in favor to decline payment.

Another motion to pay the attorney with a 20% reduction was made by Commissioner Stacey Rubain and was seconded by Commissioner Barber. The motion carried.

(2) Commissioner Scott Ussery also made a motion to decline payment for the second applicant. Following a robust discussion, Commissioner Caitlin Fenhagen seconded the motion, which carried with five votes. (Note: Commissioner Thompson recused herself from this vote, and Commissioners Barber and Nieman voted against the motion to deny pay.) **There was another motion made by Commissioner Rubain to pay the attorney at 20% which was seconded by Commissioner Barber. But Commissioner Ussery opposed, stating that there was already a motion on the table. And the Chair took the vote to decline payment, which ultimately passed.

The 2025 recipient of the John Rubin Award for Excellence in Training was Anthony Monaghan, assistant public defender from Mecklenburg County.

Executive Session

Following a second closed session, Chair Bryan Jones convened again in open session at 3:36 p.m. and announced that Annick Lenoir-Peek was appointed as Parent Defender for the state of North Carolina for a two-year term beginning July 1, 2025. She replaces Wendy Sotolongo, who retired June 30, 2025.

Adjournment

All agenda items having been addressed, the Chair adjourned the meeting at 3:38 p.m.

Next Meeting: August 22, 2025 | Location: NCJC – Raleigh, NC

DRAFT

Updates to Changes in Law and Practice



Potential changes on the horizon

Respondent Counsel in Incompetency Proceedings

Timothy Heinle
Heinle@sog.unc.edu

Bird's eye view of Chapter 35A

- Special Proceeding for determining legal incompetency (*c.f.* capacity to proceed; Rule 17 GALs).
- Provide guardian(s) for wards.
- Right to counsel. G.S. 35A-1107.
 - Often paid by IDS. G.S. 35A-1116(c2)(4).
 - Dual-role representation.



Dual Roles of the GAL

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graph TD; A[Dual Roles of the GAL] --- B[Attorney (express wishes)]; A --- C[Guardian ad litem (best interests)];
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Attorney
(express wishes)

Guardian ad
litem
(best interests)

Issue #1 – Scope of GAL’s work; costs

Incompetent adult. – “An adult or emancipated minor who lacks sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property...”

E.g., meet with respondent; obtain records; interview service providers and collaterals

“An adult or emancipated minor does not lack capacity if, by means of a less restrictive alternative, he or she is able to sufficiently (i) manage his or her affairs and (ii) communicate important decisions concerning his or her person, family, and property.”



Scope of work re: Powers of Attorney

- Who drafts? GAL?
 - RPC 1.7 (competence); 1.7 (conflict); 1.14 (diminished capacity)
- Who pays? How much?

Issue #2 – Potential legislation

- ❑ New training requirements
- ❑ Two people for dual roles
 - \$\$\$
 - Restricting right to counsel
- ❑ Pilot program



What is the status of any legislation? Who will sponsor?

Director's Report on IDS Business

- Department may reallocate the surplus for purposes authorized in subdivision (2) of this subsection.
- (2) Forty-five million dollars (\$45,000,000) to the Authority for site analysis, engineering, grading, site preparation, site work, and access road and taxiway construction not otherwise provided for in this section that is needed at the Airport for the project. If funds allocated pursuant to this subdivision exceed the amount necessary for the purposes of this subdivision, the Department may reallocate the surplus for the purpose authorized in subdivision (1) of this subsection.
 - (3) Seven million nine hundred thousand dollars (\$7,900,000) to the Department of Transportation for roadwork needed at the airport for the project. Notwithstanding any other provision of law, the Department of Transportation is authorized to utilize Progressive Design Build, Construction Management General Contractor, or any other procurement methodology to contract for the delivery of improvements for which funds are provided in this subdivision.
 - (4) Five million dollars (\$5,000,000) to the City of Greensboro for water and sewer infrastructure improvements needed to support the project.
 - (5) Ten million two hundred thousand dollars (\$10,200,000) to the Authority for the following:
 - a. Renovation costs of, and capital improvements to, an existing airport hub to (i) render it suitable for the project and (ii) be owned by the Authority.
 - b. Offsets for costs required by the Federal Aviation Administration.
 - (6) Thirty-five million dollars (\$35,000,000) to the Authority for the following costs related to construction of a facility for manufacturing, research, and development to be owned by the Authority for the project: (i) costs for general conditions, construction administration, construction of the substructure and shell of the facility, building services, and mechanical systems, (ii) contractor fees, and (iii) fees for permitting, inspections, and related administrative costs.

SECTION 2C.2.(b) On September 1 of each year funds appropriated for the airport remain unexpended until all funds have been expended, the Department shall report on the use of such funds to the House of Representatives and the Senate committee or subcommittee responsible for base budget and appropriations, to the Joint Legislative Economic Development and Global Engagement Oversight Committee, to the Joint Legislative Commission on Governmental Operations, and to the Fiscal Research Division. The report shall include, at a minimum, an executive summary of the performance of the business; the performance criteria, remedies, and safeguards required by the Department for the funds; a description of the current status of the project; the amount that was paid in the prior fiscal year; the purpose for which the amount was paid; the total amount that has been paid; and any encumbrance allowed on the land or an improvement on the land, including any lease.

PART II-D. JUSTICE AND PUBLIC SAFETY

ADDRESS PAC FUND SHORTFALL

SECTION 2D.1. There is appropriated from the General Fund to the Administrative Office of the Courts, Office of Indigent Defense Services, the sum of ten million dollars (\$10,000,000) in nonrecurring funds for the 2025-2026 fiscal year to be deposited into the Private Assigned Counsel (PAC) Fund and used for the purposes of that Fund.

SUPPORT NORTH CAROLINA NATIONAL GUARD READINESS CENTERS

NC Office of Indigent Defense Services

Strategic Plan

2025 – 2029

DRAFT

July 25, 2025

Office of Indigent Defense Services
Aaron.M.Gallagher@NCCourts.org

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A. Introduction

The North Carolina Office of Indigent Defense Services (IDS) has a statutory mandate to enhance oversight of the delivery of counsel and related services provided at State expense; to improve the quality of representation and ensure the independence of counsel; to establish uniform policies and procedures for the delivery of services; to generate reliable statistical information in order to evaluate the services provided and funds expended; and to deliver services in the most efficient and cost-effective manner without sacrificing quality representation.

IDS is responsible for the provision of counsel at the trial and appellate level in:

- adult criminal cases and juvenile delinquency proceedings;
- involuntary commitment cases;
- abuse, neglect, and termination of parental rights proceedings; and
- other cases where counsel is a statutory or constitutional right.

IDS Central Office staff is responsible for planning, budget oversight, development of policy, data analysis, and financial services (recoupment receipts and attorney payments).

There are five statewide defender offices: Capital Defender, Juvenile Defender, Parent Defender, Special Counsel (involuntary commitment), and Appellate Defender. The statewide defenders are appointed to four-year terms by the IDS Commission. The state defenders work closely with Central Office staff and the Commission.

IDS's ability to fulfill the second prong of its statutory mandate – improve the quality of representation and ensure the independence of counsel – is presently limited. Trial level representation in the state's 100 counties is provided through three different delivery models. State-funded public defender offices exist in 60 counties; while IDS has budgetary oversight, the chief public defender is selected by the senior resident superior court judge and IDS has no supervisory control over that individual. In 18 counties, five of which also have public defender offices, IDS contracts with private attorneys to provide representation; those attorneys receive some oversight from IDS's two regional defenders and are paid directly by IDS pursuant to the terms of their contracts. In the remaining 27 counties, judges appoint counsel from a roster that is to be composed in accordance with the Uniform Appointment Plan promulgated by IDS pursuant to statute. The Plan sets out required qualifications for counsel for different types of cases. Roster management and oversight is left to the local bar. Fee applications are submitted to the judge who oversaw the matter to be approved and sent to IDS for payment.

A statewide shortage of quality attorneys willing to agree to take cases at the state rates limits the ability of IDS to improve the quality of representation and ensure the independence of counsel.

B. Mission, Vision, & Values

1. Mission

To uphold the constitutional promise of counsel for every indigent person by supporting a system of independent public defense grounded in quality, consistency, and accountability. We provide the resources, training, and policy framework public defense attorneys need to deliver effective, client-centered representation across North Carolina.

2. Vision

Ensure all North Carolinians, regardless of the ability to pay, has robust legal representation and their cases are fairly adjudicated.

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3. Values

Value # 1: Independence of Defense Counsel

Everyone deserves independent counsel with no allegiance to the government or the courts, regardless of their ability to pay. The United States Supreme Court has recognized that a lawyer's independence is essential to a fair trial. The American Bar Association also lists independence as the first of its Ten Principles of a Public Defense Delivery System, calling it a core requirement for meaningful representation.

To protect this right, public defense attorneys must be free to act in the interest of their clients, without pressure from political leaders, judges, or funding concerns. IDS supports a system where appointed lawyers have the same independence as private attorneys.

This independence is what allows attorneys to advocate zealously and effectively. When public defense lawyers are empowered to focus solely on their clients' needs, it strengthens both the quality of representation and the fairness of outcomes. Just as importantly, the public must see that this independence is real. The appearance of fairness and impartiality is essential to building and maintaining trust in the justice system.

Value # 2: Excellent service to our stakeholders

IDS staff will receive feedback and respond to the concerns of its wide array of stakeholders including the clients who rely on attorneys funded by IDS, the attorneys who rely on IDS for the resources necessary to provide effective representation, and the judges and other court system actors who are involved in the process of appointment of qualified counsel for indigent persons.

The responses provided by IDS will address stakeholder concerns through the implementation of solutions that will increase agency accountability and automation to further the agency vision of growing and supporting a strong, statewide community of zealous, client centered public defense attorneys.

Value # 3: Responsible stewardship of the tax dollars entrusted to the agency for the provision of counsel to poor people

IDS best serves both indigent clients and our state’s taxpayers by thoughtfully allocating and carefully accounting for the funds provided to it. Responsible stewardship includes working to ensure that public funds are not used to provide anything less than zealous and effective representation.

4. Goals, Objectives, & Performance Measures

Goal 1

Continue to implement a comprehensive long-term plan for provision of quality client service in 100 counties.

	Performance Measures
<p>Objective: 1.1 Improve the effectiveness and efficiency of public defense by implementing statewide expansion of public defender districts.</p>	<ul style="list-style-type: none"> • Performance Measure 1.1.1 – Percentage of Judicial Districts with a public defender office. • Performance Measure 1.1.2 – Percentage of indigent cases to which a public defender is appointed as opposed to private assigned counsel (PAC) or managed assigned counsel (MAC) is appointed. • Performance Measure 1.1.3 – Effective case outcomes achieved by PD compared to similar outcomes achieved by PAC/MAC.
<p>Objective: 1.2 Determine the effectiveness and efficiency of the Managed Assigned Counsel (MAC) system.</p>	<ul style="list-style-type: none"> • Performance Measure 1.2.1 – Cost per case for MAC attorneys compared to the cost per case of PAC attorneys. • Performance Measure 1.2.2 – Percentage of MAC attorneys remaining in the program after one year.

Goal 2

Improve compensation and case-related support to all appointed counsel to help build private assigned counsel rosters and to help improve client outcomes.

	Performance Measures
Objective: 2.1 Implement the OASIS system statewide to streamline payments and increase PAC population.	<ul style="list-style-type: none"> • Performance Measure 2.1.1 – Percentage of IDS Fiscal staff time to process 100 fee apps in OASIS compared to processing 100 fee apps counties using Enterprise Justice (excluding MAC). • Performance Measure 2.1.2 – Percentage of PAC retained from prior year.
Objective: 2.2 Implement increased or differential rates to grow the PAC population in underserved rural areas.	<ul style="list-style-type: none"> • Performance Measure 2.2.1 – Number of new PAC attorneys added in the previous 12 months.
Objective: 2.3 Provide PD level access to AXON digital discovery platform to pilot MAC population to increase effectiveness and efficiency.	<ul style="list-style-type: none"> • Performance Measure 2.3.1 – Number of PAC attorneys with AXON licenses provided by IDS. • Performance Measure 2.3.2 – Hours spent on digital discovery for pilot population compared to those without AXON licenses for similar case types.

Goal 3

Improve agency administrative support for and communications to public defense attorneys to help improve client outcomes and to increase efficiency of agency operations.

	Performance Measures
Objective: 3.1 Increase PD office operational effectiveness and efficiency.	<ul style="list-style-type: none"> • Performance Measure 3.1.1 – Assistant Public Defenders retained from prior year. • Performance Measure 3.1.2 – Percentage of new APDs assigned a mentor during onboarding. • Performance Measure 3.1.3 – Number of training

	<p>opportunities offered to APDs annually.</p> <ul style="list-style-type: none"> • Performance Measure 3.1.4 – Number of PD staff participating in agency training and community building opportunities during the previous 12 months.
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Performance Measures	
<p>Objective: 3.2 Increase the effectiveness of counsel through informed decision making by PD staff.</p>	<ul style="list-style-type: none"> • Performance Measure 3.2.1 – Number of opportunities and resources to support informed decision making about client conflicts. • Performance Measure 3.2.2 – Percentage of cases being referred to PAC due to conflicts in the PD office.
<p>Objective: 3.3 Increase the efficiency of counsel and strategic use of staff time through the utilization of available technology tools by PD staff.</p>	<ul style="list-style-type: none"> • Performance Measure 3.3.1 – Number of staff hours reviewing digital discovery as a percentage of hours out of court.
<p>Objective: 3.4 Maximize the subscriber engagement with IDS publications issued to the defense community.</p>	<ul style="list-style-type: none"> • Performance Measure 3.4.1 – Number of unique clicks per quarterly IDS newsletter.

C. Priority Questions

1. What can IDS do to ensure adequate access to counsel in all of North Carolina's 100 counties?

2. How does digital discovery affect casework and PAC costs?
3. Are there identifiable and changing trends in demand for services that can inform PAC projections?
4. Will MAC be the preferred method of service delivery in court appointed cases in the future?

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Commission Business

§ 7A-498.4. Establishment of Commission on Indigent Defense Services.

(a) The Commission on Indigent Defense Services is created within the Office of Indigent Defense Services and shall consist of 13 members. To create an effective working group, assure continuity, and achieve staggered terms, the Commission shall be appointed as provided in this section.

(b) The members of the Commission shall be appointed as follows:

- (1) The Chief Justice of the North Carolina Supreme Court shall appoint one member, who shall be an active or former member of the North Carolina judiciary.
- (2) The Governor shall appoint one member, who shall be a nonattorney.
- (3) The General Assembly shall appoint one member, who shall be an attorney, upon the recommendation of the President Pro Tempore of the Senate.
- (4) The General Assembly shall appoint one member, who shall be an attorney, upon the recommendation of the Speaker of the House of Representatives.
- (5) The North Carolina Public Defenders Association shall appoint member, who shall be an attorney.
- (6) The North Carolina State Bar shall appoint one member, who shall be an attorney.
- (7) The North Carolina Bar Association shall appoint one member, who shall be an attorney.
- (8) The North Carolina Academy of Trial Lawyers shall appoint one member, who shall be an attorney.
- (9) The North Carolina Association of Black Lawyers shall appoint one member, who shall be an attorney.
- (10) The North Carolina Association of Women Lawyers shall appoint one member, who shall be an attorney.
- (11) The Commission shall appoint three members, who shall reside in different judicial districts from one another. One appointee shall be a nonattorney, and one appointee may be an active member of the North Carolina judiciary. One appointee shall be Native American. The initial three members satisfying this subdivision shall be appointed as provided in subsection (k) of this section.

(c) The terms of members appointed pursuant to subsection (b) of this section shall be as follows:

- (1) The initial appointments by the Chief Justice, the Governor, and the General Assembly shall be for four years.
- (2) The initial appointments by the Public Defenders Association and State Bar, and one appointment by the Commission, shall be for three years.
- (3) The initial appointments by the Bar Association and Trial Academy, and one appointment by the Commission, shall be for two years.
- (4) The initial appointments by the Black Lawyers Association and Women Lawyers Association, and one appointment by the Commission, shall be for one year.

At the expiration of these initial terms, appointments shall be for four years and shall be made by the appointing authorities designated in subsection (b) of this section. No person shall serve more than two consecutive four-year terms plus any initial term of less than four years.

(d) Persons appointed to the Commission shall have significant experience in the defense of criminal or other cases subject to this Article or shall have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors or law

Anita Welch Lossiah, JD

Cherokee, NC 28719
(828) 359-7439 anitloss@ebci-nsn.gov

PROFESSIONAL SUMMARY

Versatile public official focused on strengthening governance and increasing effectiveness of government programs. Passionate about improving management and oversight of strategic plan implementation. Quick and firm decision-maker possessing first-rate communication and organizational skills. Recognized for successfully collaborating with upper-level management to develop work plans, financials, and strategies to accomplish targeted population-wide results.

SKILLS

- Excellent administrative abilities
- Leadership
- Excellent work ethic
- Detail-oriented
- Adaptable
- Responsible
- Conflict resolution skills
- Good listening skills
- Customer Service
- Interpersonal Communication

WORK HISTORY

DIRECTOR OF HUMAN SERVICES | 10/2023 to Current

Eastern Band of Cherokee Indians - Cherokee, NC

- Oversight of Human Services Programs including Family Safety, Child Advocacy, Domestic Violence, and Juvenile Services.
- Direct oversight of all program managers
- Acting manager over Family Safety, Child Advocacy and Domestic Violence programs until new managers hired.
- Responsible for budget oversight.
- Began as Interim Director
- Responsible for hiring and employee evaluations.
- Ensures all revenue sources are compliant with tribal, state, and federal mandates.
- Develop goals, objectives, and priorities.

CHEROKEE POLICE COMMISSIONER, APPOINTED OFFICIAL | 01/2020 to Current

Eastern Band of Cherokee Indians - Cherokee, NC

- Performance and regulatory oversight of EBCI law enforcement programs.

- Review, amend and recommend policies, procedures, handbooks, guidelines, and MOUs of law enforcement programs.
- Oversight to receive, review, and monitor public complaints of programs and officers.
- Previously heard final appeals from law enforcement officers for discipline imposed by their respective program manager.
- Review and make recommendations on annual budgets, qualifications for each rank and grade, and equipment supplied.
- Track and report quantitative and qualitative measures on crimes reported, investigated, and charged in tribal, federal, and state courts.

POLICY ANALYST | 01/2018 to 10/2023

Eastern Band of Cherokee Indians - Cherokee, NC

- Modified, updated, and processed existing policies.
- Developed team communications and information for meetings.
- Resolved problems, improved operations, and provided exceptional service.
- Developed and implemented performance improvement strategies and plans to promote continuous improvement.
- Led projects and analyzed data to identify opportunities for improvement.
- Collaborated with EBCI government divisions and entities to achieve population-wide policy goals using results-based accountability methodology.
- Led multi-system team in delivery of policy development project, resulting in strengthening of EBCI governance.
- EBCI Census 2023 Team - coordinated and implemented first electronic census with demographic information content.

TRIBAL COUNCIL REPRESENTATIVE, ELECTED OFFICIAL | 10/2015 to 09/2018

Eastern Band of Cherokee Indians - Cherokee, NC

- Representative for Yellowhill Township
- Promoted positive relationships between tribal, county, state, federal and other government offices by working collaboratively to resolve interjurisdictional issues and regional problems affecting residents.
- Facilitated oversight and management of EBCI services when adopting ordinances, resolutions, policies and regulations to safeguard health, safety, prosperity, education and Cherokee culture of current and future citizens.
- Created departments, divisions, administrative offices, and citizen advisory committees, and guided each in making recommendations to improve policies, projects and spending allocations.
- Alerted constituents of government actions and programs by way of personal appearances at town meetings and individual meetings.
- Drafted legislation and amendments wrote government policies and established budgets.

LAW CLERK | 01/2006 to 09/2015

Eastern Band of Cherokee Indians - Cherokee, NC

- Position within the Office of the Attorney General
- Assessed cases for probable outcomes by researching black letter law and other legal authority, comparing fact patterns to those of precedential cases.
- Created and prepared legal drafts by organizing and assembling information for legal documents and forms, including legislation, and policies.
- Researched and stayed abreast of industry techniques to delivering effective solutions and best practices.
- Supported legal team by conducting research, drafting briefs, gathering information, and interpreting legal documents.
- Maintained deep knowledge of regulations and reviewed local, state, and federal laws to conduct daily tasks.
- Provided assistance to EBCI programs and entities as assigned.

ASSISTANT PROSECUTOR | 01/2004 to 12/2005

Eastern Band of Cherokee Indians - Cherokee, NC

- Position within Cherokee Tribal Courts
- Assisted prosecutor and law enforcement with perceived challenges to prosecution and resolutions to such challenges.
- Investigated, reviewed, and prepared cases for disposition.
- Worked with legislators to assist in drafting legislation and enforcement procedures.
- Assisted prosecutor with courses of action and possible repercussions of cases to clients.
- Researched and wrote contracts, agreements, and proposals.
- Communicated with clients and collected information to research cases and prepare settlement offers.

LICENSED OPTICIAN | 11/1997 to 06/2001

Memphis Family Vision Practice - Memphis, TN

LICENSED OPTICIAN, MANAGER | 05/1996 to 11/1997

U. S. Vision - Memphis, TN

OPTICIAN | 07/1992 to 05/1996

Mid-South Vision Center - Bartlett, TN

EDUCATION

University of Denver, Sturm College of Law - Denver, Colorado | J.D.
Law School

University of Mississippi - University, MS | Bachelor of Arts | B.A.
Pre-Optometry, English, Psychology

BOARDS AND COMMITTEES

Currently serve on Boards or Committees for the following:

- Museum of the Cherokee People
- Sequoyah Birthplace Museum
- Western Carolina University Cherokee Center Board of Advisors
- Health Board
- Tribal Health Improvement Plan Committee
- Local Emergency Planning Committee

BUSINESSES

Cherokee Country Vacation Rental (unlisted)

COMMUNITY

Yellowhill Community Club

CERTIFICATES

- The Georgia Commission on Family Violence – Coordinated Community Response
- Beauty For Ashes
- World Elder Abuse Awareness Day – recognition of support
- RMEF – enrollment
- Microsoft Access Class
- Tribal Elections: Ordinances & Procedures
- North American Indian Women's Association – recognition of service
- US Department of Justice – Tribal Action Plan Development
- WNC Health Network – Getting to Results Training
- HIPAA Overview Training

PERSONAL

My husband, Bo, and I have five (5) adult children, three (3) grandchildren, and our dog, Elohi. We enjoy being with family, hiking, jet skiing, traveling, gardening, and eating good food.



Bill Stetzer · 2nd
Special Superior Court Judge



- North Carolina Administrative Office of the Courts

Gastonia, North Carolina, United States · [Contact info](#)

500+ connections



Brian Cromwell, Dena King, and 3 other mutual connections

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Highlights



You both worked at North Carolina Administrative Office of the Courts

Bill worked at North Carolina Administrative Office of the Courts after you started

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Bill Stetzer commented on a post · 3w

Todd is a great pick up!

Bill Stetzer commented on a post · 1mo

Congratulations! 🎉

Bill Stetzer commented on a post · 2mo

So happy for you but what a loss for Gaston County. I truly enjoyed working with you. Congratulations on your new adventure!!!

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Experience



Special Superior Court Judge
North Carolina Administrative Office of the Courts
Jan 2024 - Present · 1 yr 8 mos
Gastonia, North Carolina, United States

📌 Law



County Attorney
Gaston County · Full-time
Jan 2022 - Jan 2024 · 2 yrs 1 mo

📌 Law and Civil Litigation



United States Attorneys' Offices

Full-time · 4 yrs 1 mo

Acting First Assistant United States Attorney

Nov 2021 - Jan 2022 · 3 mos

Charlotte, North Carolina, United States

Acting United States Attorney

Mar 2021 - Nov 2021 · 9 mos

📌 Law

First Assistant United States Attorney

Jan 2018 - Mar 2021 · 3 yrs 3 mos

Charlotte, North Carolina, United States

📌 Civil Litigation

Homicide Team Supervisor

Mecklenburg County District Attorney's Office · Full-time

Jan 2011 - Jan 2018 · 7 yrs 1 mo

Charlotte, North Carolina, United States

📌 Law and Homicide Investigations

Education



Washburn University School of Law

Doctor of Law - JD, Law

1993 - 1996



University of Central Florida

Bachelor of Arts - BA

1989 - 1992

Skills

Homicide Investigations

Homicide Team Supervisor at Mecklenburg County District Attorney's Office

👤 1 endorsement

Law



4 experiences across North Carolina Administrative Office of the Courts and 3 other companies

👤 1 endorsement

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Jarrod Lowery
State Representative

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← Experience

Partner

First Light Consulting

Mar 2024 - Present · 1 yr 6 mos



State Representative

North Carolina General Assembly

Jan 2023 - Present · 2 yrs 8 mos

Raleigh, North Carolina, United States



Community Relations Manager

Mountaire Farms

Jul 2019 - Mar 2024 · 4 yrs 9 mos



Director

LUMBEE TRIBE ENTERPRISES, LLC

Apr 2016 - Dec 2022 · 6 yrs 9 mos

Pembroke, North Carolina, United States



Regional Field Director

North Carolina Department of Insurance

Jan 2017 - Jul 2019 · 2 yrs 7 mos

Raleigh, North Carolina

Regional Field Director

Office of Governor Pat McCrory, State of North Carolina

Apr 2013 - Dec 2016 · 3 yrs 9 mos



Tank Technician

United States Marine Corps

Oct 2006 - Sep 2012 · 6 yrs

Camp Lejeune, North Carolina, United States



Collections Representative

BB&T

Feb 2012 - Aug 2012 · 7 mos

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NORTH CAROLINA OFFICE OF INDIGENT DEFENSE SERVICES

MARY POLLARD

EXECUTIVE DIRECTOR
MARY.S.POLLARD@NCCOURTS.ORG

OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

BRYAN JONES

CHAIR

NCIDS.org

From: Whitney Fairbanks, Assistant Director and General Counsel

Date: August 13, 2025

Re: Prospective Commission Appointment

Representative Lowery has expressed interest in serving on the Commission but is currently evaluating whether he can commit the time the position deserves. If he determines he cannot, he will provide the Director with the names of qualified individuals for consideration. We expect to receive those names in advance of the August 22 meeting.



Jarrold Lowery · 2nd
State Representative

- First Light Consulting

Pembroke, North Carolina, United States · [Contact info](#)

500+ connections



Lana Dial and Bruce Hoof are mutual connections

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Jarrold Lowery · 2nd
State Representative
2mo · 🌐

Next week NC House Republicans will be releasing our proposed budget-

us The NC House Budget will make the first \$5000 in tip income tax free, helping North Carolina families and service workers.

🍎 The budget will also enact a sales tax holiday for school supplies starting in 2026, cutting costs for parents and teachers.

👍❤️ 21



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Experience

Partner

First Light Consulting
Mar 2024 - Present · 1 yr 6 mos



State Representative

North Carolina General Assembly
Jan 2023 - Present · 2 yrs 8 mos
Raleigh, North Carolina, United States



Community Relations Manager

Mountaire Farms
Jul 2019 - Mar 2024 · 4 yrs 9 mos



Director

LUMBEE TRIBE ENTERPRISES, LLC
Apr 2016 - Dec 2022 · 6 yrs 9 mos
Pembroke, North Carolina, United States



Regional Field Director

North Carolina Department of Insurance
Jan 2017 - Jul 2019 · 2 yrs 7 mos
Raleigh, North Carolina

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Education

UNC Pembroke

Bachelor's degree, Political Science and Government
2007 - 2012

Activities and societies: Student Government Association- Senator
UNCP Billiard Team... [...see more](#)

Skills

Leadership



Endorsed by Sarah Sehgal who is highly skilled at this



22 endorsements

Public Speaking

Endorsed by Nicole Brooks, MPA who is highly skilled at this



41 endorsements

Show all 25 skills →

Interests

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Robert Herjavec · 3rd

Emmy Award Winner 🏆 Entrepreneur | Investor | Cybersecurity Expert Lead
Shark on Shark Tank 🦈 Author | Mentor | Car Enthusiast Constant, Forward
Momentum 🚀

2,290,170 followers

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Mohamed El-Erian

President @ Queens' College, Cambridge | Finance, Economics Expert
2,602,117 followers

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Gina Giorgio · 3rd

Founder NC Psychedelic Policy Coalition | SSDP Director of Strategy & Development | Communications and Policy Specialist

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Mike Schietzelt ✓ · 2nd

Representative for North Carolina's 35th House District; Litigation Attorney

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John Lowery, MPA, MAT · 2nd

Chairman of the Lumbee Tribe
Chairman of Lumbee Tribal Holdings, LLC

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Maria Cervania · 2nd

North Carolina State House Representative - District 41

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Mikayla Lockear · 3rd

Grant Writer - The Lumbee Tribe of North Carolina

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Mitch Genda · 2nd

Franchise Owner and Building Company President AR Homes

Connect



John R. Condren · 2nd

Managing Partner at Barth Condren, LLP

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Nathan Bearman · 2nd

Chief Executive Officer at FurnitureLab

Connect



Jonathan Edmondson  · 3rd
Chief Executive Officer @ Koshee | CFA

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People you may know



Christine Walczyk
District Court Judge, Wake County, North Carolina

[Connect](#)



William Breeze
attorney at William Breeze, Indigent defense attorney

[Connect](#)



Deonte' Thomas
Chief Public Defender of Wake County

[Connect](#)



Jason Yoder
Appellate Counsel at Yoder Law PLLC

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Jeff Nieman 
District Attorney

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First Light Consulting

Mar 2024 - Present · 1 yr 6 mos



State Representative

North Carolina General Assembly

Jan 2023 - Present · 2 yrs 8 mos

Raleigh, North Carolina, United States



Community Relations Manager

Mountaire Farms

Jul 2019 - Mar 2024 · 4 yrs 9 mos



Director

LUMBEE TRIBE ENTERPRISES, LLC

Apr 2016 - Dec 2022 · 6 yrs 9 mos

Pembroke, North Carolina, United States



Regional Field Director

North Carolina Department of Insurance

Jan 2017 - Jul 2019 · 2 yrs 7 mos

Raleigh, North Carolina

Regional Field Director

Office of Governor Pat McCrory, State of North Carolina

Apr 2013 - Dec 2016 · 3 yrs 9 mos



Tank Technician

United States Marine Corps

Oct 2006 - Sep 2012 · 6 yrs

Camp Lejeune, North Carolina, United States



Collections Representative

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Feb 2012 - Aug 2012 · 7 mos

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Gina Giorgio · 3rd

Founder NC Psychedelic Policy Coalition | SSDP Director of Strategy & Development | Communications and Policy Specialist

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Mike Schietzelt · 2nd

Representative for North Carolina's 35th House District; Litigation Attorney

[Connect](#)



John Lowery, MPA, MAT · 2nd

Chairman of the Lumbee Tribe
Chairman of Lumbee Tribal Holdings, LLC

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Maria Cervania · 2nd

North Carolina State House Representative - District 41

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Mikayla Lockear · 3rd

Grant Writer - The Lumbee Tribe of North Carolina

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Proposed Initiatives for PAC Recruitment and Sustainability

To: IDS Commission Members

From: Carla Huff, Recruitment and Training Coordinator, IDS

The Development Committee met on the following dates: June 20th, July 18th, and July 31st, 2025

The following Development Committee members were selected for participation: Tucker Charns, Sharif Deveaux, Traynham Dorn, Cait Fenhagen, Dorothy Hairston-Mitchell, Carla Huff, John Nieman, Sarah Olson, Jimbo Perry

The purpose of this memo is to organize and communicate recent proposals for consideration to increase private assigned counsel representation in North Carolina. The following includes

- 1) achievable ideas and actions that can realistically be implemented with current capacity and resources
- 2) ideas and actions that align with our mission and values, however are beyond our current staffing or funding to implement
- 3) ideas and actions that are achievable and will require partnership, collaboration and external leadership

Challenge and Proposed Solution/s: Insufficient Training and Resources

- A 1-hour orientation to IDS is being offered monthly effective August 2025 and will be held the first Friday of the month from 1pm-2pm.
 - The training will provide orientation to the IDS website, processes, training information, resources, etc.
 - Training attendance will support gathering regional data for ongoing mentorship/social connection
 - This training provides a “face” to IDS to encourage contact for troubleshooting challenges/issues
 - The training ensures orientation to processes (resulting in decreased stress/frustration) and distribution of resources
 - Consideration for paid, mandatory training and benefit of ensuring universal distribution of resources, processes, support
- A 6-hour online bootcamp will be offered with UNC-SOG with goal of expanding to 12 hours
 - Consistency-all PAC/MAC receive the same information and guidance; promotes uniformity in service delivery
 - Efficiency-avoids duplication of effort; streamlines onboarding

Proposed Initiatives for PAC Recruitment and Sustainability

- Quality, Performance and Morale-reduces liability through standardized training records; training alignment with organizational goals and best practices, and ensures accessibility for training material to all individuals
- Specific training requirements on working with clients with high trauma histories/under stress and on managing expectations working with indigent clients
- Future goals:
 - Having this program count for the Professionalism for New Attorneys (PNA) requirement
 - Offer both in person and on-demand
 - Follow-up check-ins for new attorneys at 30, 60, 90 days to uncover gaps/provide support
 - Ensure local attorney mentorship for participants
 - Make the training mandatory and compensate attendees for time spent in training
- Improve sharing of court information, technology and resources
 - Share information about key resources during IDS Orientation
 - Add information to IDS website that has statewide applicability, ex. Vinelink/inmate locator info.
 - Work with Regional Defenders to identify gaps information and strategize on how to fill those gaps – ex. What you need to do before conducting a jail visit?
 - Recruitment and Training Coordinator will develop Regional Resource Libraries for attorneys to share *Pattern Cross Examination For Digital Forensics*, *NC Evidence Courtroom Manual* and *NC Criminal Law and Procedure*

Challenge and Proposed Solution/s: **Workload and Time Constraints**

- IDS and Development Committee will strategize on how to share information about Districts that are a model, for example at DA's Conference, Judge's Conference and through local jurisdictions that have regular meetings: DAs, PDs, Judges, Local Bar
- Practices to highlight: Districts that are supportive of calendaring best practices, effective clerk processes for assigning cases, training on relational courtroom etiquette such as the Crucial Conversations Course, and best practices for jail visitation and discovery review.
- Consider whether IDS can collect data showing the effectiveness of any of these practices

Challenge and Proposed Solution/s: Community of Practice

- IDS and the Development Committee can collect and share information about Districts employing these practices that facilitate a community of practice, including Local Bars providing spaces and supplies
- Attorney lounges could be outfitted with resources that attorneys need to include wellness spaces (stress reduction to improve overall health and well-being, law books, basic supplies (copy machine, two-hole punch, stickie notes)
*PAC can be provided with printer fob that provides a certain number of copies, or PAC pay for (public education institutions provide this method for staff)

Challenge and Proposed Solution/s: Recruitment Focus Attorneys

IDS and Development Committee should work to support efforts in these areas:

- Educate established law firms about benefits of having new associates join the appointed rosters
- Support existing attorneys that practice in this area
 - Mentorship/Peer Groups-need to identify incentives for mentors
 - Solicit attorneys from other practice areas who are interested in joining rosters
 - Existing attorneys outside of the state-need to address what motivates moving to NC, low pay-barrier. Highlight incentives such as low-cost training, resources, and support.
 - Support for recent law graduates
 - Could provide free training-UNC SOG
- Other incentives to offer or highlight:
 - Free/Low-Cost Ethics/PWB CLEs to law firms and bar groups
 - Fund supplementation for Lexis/Nexis (\$395-mo) or other technology tools
 - Law school loan repayment eligibility
 - Reduced cost health benefits for attorneys to include Employee Assistance Program (EAP) coverage
 - Differential pay pilot program for difficult to serve areas
- DOJ and Access to Justice Grants (Future Consideration)-supplement with equipment support

Challenge and Proposed Solution/s: Recruitment Focus Law School Students and Competing with private law firm funding sources

- Work with community partners to encourage law firms to support public interest opportunities for students
- Collaborate with law schools to keep students informed about NC IOLTA Funding, fellowships, opportunities for low-cost Bar Prep courses
- Research: AOC’s Budget for recruiting events and consider collaboration with IDS/DA’s Offices for specific recruitment events, including at the undergrad levels
- Consider: WFH/Hybrid work options or 4-day work week for interns
- DOJ and Access to Justice Grants (future consideration)-supplement with financial and equipment support
- Consider recruitment efforts at high school and undergraduate mock trial programs

Challenge and Proposed Solution/s: Recruitment focus housing and providing affordable, quality and safe housing

- University/College Housing Support (Private Law Firm Sponsorship Consideration)
UNC-CH/Charlotte, ECU, NCSU, Elon, UNCG, Davidson College, NCA&T, UNCW
- Create new housing through rural grant initiatives and donor support
- [NC Rural Center - Building Vibrant Rural Communities](#)
- [Rural Grants Program | Hometown Strong](#)
- [Rural RISE NC](#)





MARY POLLARD

EXECUTIVE DIRECTOR
MARY.S.POLLARD@NCCOURTS.ORG

OFFICE OF INDIGENT
DEFENSE SERVICES
SAFEGUARDING JUSTICE

BRYAN JONES

CHAIR

NCIDS.org

TO: Budget Committee of the IDS Commission

FROM: Mary S. Pollard, Director

DATE: August 1, 2025

RE: Changes to Part 1 of the Rules of Delivery of Service and Attorney Fee and Expense Policies in Non-capital Criminal and Non-criminal Cases

Pursuant to the authority granted to the Commission under G.S. 7A-498.5(c) and (f), and to the IDS Director under G.S. 7A-498.5(c)(1), the IDS Office has revised the *Rules for the Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level (Part 1)* and updated the IDS policies governing attorney fee and expense applications in these cases.

These changes were made to:

- Improve readability and clarity through plain language drafting;
- Align rules and policies with evolving practices, including statewide implementation of eCourts;
- Clarify billing procedures, deadlines, and supporting documentation requirements; and
- Consolidate or relocate explanatory material to improve usability and reduce duplication.

Significant updates include:

- A new 90-day deadline for submitting fee applications in non-capital cases filed on or after January 1, 2026;
- A requirement that attorneys enroll in direct deposit for payment (no paper checks issued);
- A requirement that attorneys maintain itemized billing records—including date, task, and time spent—for five years, and provide them to IDS upon request regardless of whether the court requires attachment of the records to the fee application; and
- Procedural and technical changes to support integration with OASIS and eCourts platforms.

While tracked versions of the revised rule and policies are attached, the volume of structural and formatting changes may make them difficult to read. For ease of review, a crosswalk comparing the previous and current versions of Part 1 and a summary table of all policy updates are also attached and may be more useful reference tools.

Commission action is requested to approve the final versions of these revisions.

If the Commission approves these changes, they will take effect for non-capital criminal and non-criminal cases filed on or after January 1, 2026, unless otherwise specified in the accompanying materials.

Upon adoption and finalization, the table of contents in the attorney fee and expense policies will be revised to reflect the new section structure.

Crosswalk Table for Part 1: Rules for the Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level

1.1 Coverage and Definitions	<p>Consolidated related subsections (former 1.1(1)–1.1(4); effective January 1, 2026</p> <ul style="list-style-type: none"> • Subsection (1) amended effective March 15, 2010 • Subsection (2) amended effective May 6, 2005 • Subsection (3) amended effective February 27, 2009 • New subsection (3a) adopted effective March 15, 2010 and amended effective May 29, 2015 • <i>Commentary</i> to Rule 1.1, subsection (1) amended effective November 4, 2005, July 1, 2009, and May 29, 2015
1.2 Entitlement to Counsel (NEW)	<p>Converted from placeholder to substantive rule; codifies longstanding statutory interpretation and court practices. New rule effective January 1, 2026</p>
1.3 Notification Responsibilities	<p>New subsection (a) formerly part of commentary only; elevated to a rule with structured responsibilities for judicial officials, PDs, and clerks. Effective January 1, 2026.</p>
1.4 Determining Indigency	<p>Streamlined and reorganized from original version; maintains statutory language while adopting plain-language structure. Effective January 1, 2026.</p>
1.5 Appointment Procedure	<p>Clarified appointment mechanisms for districts with and without public defenders; added delegation standards and attorney review rights; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Subsection (a) amended effective February 10, 2005 and December 10, 2010 • Subsections (b) amended effective November 16, 2001 and July 1, 2009 • Subsection (c) amended effective December 10, 2010 and May 29, 2015 • Subsection (d) amended effective July 8, 2005, February 16, 2007, and May 29, 2015] New subsection (d1) adopted effective February 1, 2010 • Subsection (f) amended effective November 16, 2001 and May 29, 2015
1.6 Waiver of Counsel	<p>Simplified structure and clarified required findings under G.S. 15A-1242; effective January 1, 2026.</p>
1.7 Withdrawal of Appointed Counsel	<p>Added new subsection (a1) on conflicts; clarified contract withdrawal requirements; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Subsection (a1) adopted effective September 24, 2010
1.8 Contracts	<p>Reaffirmed IDS Director’s authority and cross-referenced governing statutes; minor edits for clarity. Effective January 1, 2026.</p>

<p>1.9 Payment of Appointed Counsel</p>	<p>Reorganized for readability; codified digital filing, supporting documentation rules, and fee application deadline. New structure effective January 1, 2026.</p> <ul style="list-style-type: none"> • Subsection (a) amended effective February 15, 2002, May 6, 2005, August 13, 2007 • February 1, 2008, February 27, 2009, June 5, 2009, June 1, 2011, and May 29, 2015 • Subsection (b) amended effective May 6, 2005 • Subsection (e) amended effective September 15, 2006 • Commentary to subsection (e) amended effective March 7, 2014
<p>1.10 Supporting Services</p>	<p>Edited for clarity and aligned with standardized expense policies; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Section amended December 9, 2011
<p>1.10A Alternative Service Programs</p>	<p>Added new rule authorizing IDS Director to implement alternative delivery models for non-attorney services; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Section added October 29, 2021
<p>1.11 Recoupment of Fees</p>	<p>Expanded to include civil cases; clarified due process requirements and valuation standards; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Subsections (a) and (b) and commentary amended effective September 19, 2014

Part 1: Rules for the Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level

This first part addresses the procedure for appointing and compensating counsel in all cases subject to the oversight of the Office of Indigent Defense Services (IDS Office), except for capital cases, which are covered by Part 2 of these rules, appellate cases, which are covered by Part 3 of these rules, and cases in which the State is obligated to provide legal assistance and access to the courts to inmates in the custody of the Department of Correction, which are covered by Part 4 of these rules. Parts 1 through 3 of these rules are authorized by the Indigent Defense Services Act of 2000 (IDS Act), S.L. 2000-144, Senate Bill 1323. Part 4 of these rules is authorized by § 14.9(a) of S.L. 2005-276, Senate Bill 622.

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

These rules may be changed by the IDS Commission pursuant to its authority.

Note: These rules govern the appointment and compensation of counsel in non-capital criminal and non-criminal cases. For detailed billing procedures, including fee application deadlines, required documentation, and reimbursable expenses, see IDS’s *Attorney Fee and Expense Policies for Non-Capital Criminal and Non-Criminal Cases at the Trial Level* [insert link].

Effective Date: These rules apply to non-capital criminal and non-criminal cases filed on or after **January 1, 2026**. Cases filed before that date remain governed by the prior version of Part 1.

1.1 Coverage and Context

This rule applies to all **non-capital criminal and non-criminal cases at the trial level** where the Office of Indigent Defense Services (IDS) is responsible for providing and overseeing legal representation.

It includes representation in:

- District and superior court proceedings; and
- Post-conviction proceedings where counsel is appointed under **G.S. 7A-451(a)(3)** or **G.S. 15A-1421**.

This rule does **not** apply to:

- **Capital cases**, which are governed by Part 2;
- **Appellate cases**, governed by Part 3;
- **Inmate legal assistance cases**, governed by Part 4.

For definitions of capital case, capital appeal, and related terms, see **Section 1.0 of the Practitioners Guide**.

1.2 Entitlement to Counsel

In most cases, the **court determines** whether a person is entitled to appointed counsel at state expense. This authority is set out in **G.S. 7A-452(a)**.

In some situations, North Carolina law allows other officials—such as clerks of superior court or public defenders—to make a **preliminary determination** of indigency and entitlement. All appointments must comply with IDS rules and policies.

1.3 Notification Responsibilities

(a) Notice to Defendants

Judicial officials must notify individuals of their right to counsel at appropriate stages in criminal proceedings. These requirements are not changed by the IDS Act and include:

- **G.S. 15A-511** – Magistrate at initial appearance;
- **G.S. 15A-603** – District court judge at first appearance in felony cases;
- **G.S. 15A-942** – Superior court arraignment;
- **G.S. 15A-1101** – District court arraignment in misdemeanor cases.

(b) Notification of Public Defender or Clerk

If a person remains in custody for more than **48 hours without counsel**, the custodian must notify the appropriate party:

- In **counties with a public defender**, notify the **Public Defender**, who will:
 - Make a preliminary determination of eligibility;

- Notify the court or assign themselves to the case; and
- Defer to the court for a final decision on entitlement.
- In **counties without a public defender**, notify the **clerk of superior court**, who must:
 - Bring the case to a **district court judge** for a decision on appointment and pretrial release review.

Prompt action is especially important in cases involving:

- Probation violations
- Orders for arrest (e.g., failure to appear)
- Surrenders by sureties
- Misdemeanors in districts without routine first appearances

Delay in appointing counsel may result in unnecessary pretrial detention and court inefficiencies.

1.4 Determining Indigency

(a) Definition

A person is considered **indigent** if they cannot afford to hire a lawyer or pay other necessary legal expenses at the time those expenses arise. See **G.S. 7A-450(a)**.

(b) Court Procedure

Before appointing counsel, the court must:

1. Require the person to complete a sworn **affidavit of indigency** (on a form approved by the IDS Director);
2. Make reasonable inquiry under oath to confirm the information;
3. File the affidavit in the case record; and
4. Decide whether the person is indigent based on the affidavit, statements, and any other information presented.

The court may reconsider indigency at any point during the case.

If someone who was previously found indigent becomes financially able to pay for counsel or related expenses, they must inform their attorney, who must notify the court.

Authority:

- G.S. 7A-450, -451, -452, -453
- G.S. 7A-498.3(a), (b)
- G.S. 7A-498.5(c)(8)

Rule 1.5 – Appointment Procedure

(a) Districts Without a Public Defender Office

1. Uniform Plan Required

Each judicial district must have a plan for appointing counsel in non-capital cases. The plan may apply to the entire district or to individual counties, as determined by the local bar.

2. Plan Revisions

Changes to a district or county plan must be adopted by the relevant bar and approved by the IDS Commission or its designee. Once approved, the IDS Director will certify the plan and provide it to the clerk of superior court in the affected area.

(b) Districts With a Public Defender Office

1. Plan Submission

The Public Defender must submit a proposed appointment plan to the IDS Director. The plan must describe how counsel will be appointed under the Public Defender's oversight.

2. Consultation and Approval

The Public Defender must consult with the IDS Director and the local bench and bar. The IDS Commission may approve, modify, or reject the plan.

3. Modifications After Approval

After a plan is adopted, the IDS Director may modify it in consultation with the Public Defender. Substantial changes must be approved by the IDS Commission.

4. Interim Procedures

Until a Public Defender's plan is approved, courts should continue making appointments using the existing procedure.

5. Limitations on Representation

In accordance with G.S. 7A-452 and the Public Defender's appointment plan approved by the IDS Commission pursuant to G.S. 7A-498.5(d), the Public Defender may only represent or assign counsel to represent persons entitled to counsel under the Indigent Defense Services Act and other applicable statutes. The Public Defender's authority to accept or assign cases is governed by the district or county appointment plan approved by the IDS Commission. The Public Defender shall not represent or assign counsel to represent juveniles alleged to be abused, neglected,

or dependent, as those cases are not within the scope of the IDS Office’s statutory authority under G.S. 7A-498.3(a).

(c) Districts With a Special Counsel Office

In judicial districts with a special counsel program, the court must appoint special counsel under G.S. 122C-270 to represent indigent respondents at all hearings held at the state facility.

If the special counsel office cannot handle a case, it must adopt a plan for referring cases to qualified private attorneys. The IDS Director must approve and certify the plan.

(d) Appointments Made Under Uniform Appointment Plans

1. Follow the Plan and Use the List

Counsel must be appointed from the appropriate list maintained by the clerk of superior court, as outlined in the approved district plan.

If no attorney on the list is available or willing to accept the case, the judge must first consult the IDS Director or their designee. If IDS is unable to arrange for qualified counsel within a reasonable time, the judge may appoint an attorney who:

- Is otherwise qualified under IDS standards; and
- Is a member of the district bar.

An attorney appointed under these circumstances is entitled to compensation at the IDS-approved rate.

2. Attorney Consent and Substitution

An attorney must either consent to be on the list or otherwise agree to the appointment.

An appointed attorney may not delegate important responsibilities—such as appearing at critical stages—unless:

- The substitute attorney works at the same firm;
- Is also eligible for appointment to the case type;
- Both the client and substitute attorney consent; and
- The court finds that the delegation is in the client’s best interest.

3. Clients May Not Choose Their Lawyer

A person who receives appointed counsel may not select the attorney who will represent them.

(d1) Right to Review Appointment List Decisions

If an attorney is denied placement on, or removed from, a local appointment list under subsections (a), (b), or (c), they may request review by the IDS Director or their designee, in accordance with IDS policies and procedures. [LINK TO POLICY](#)

(e) Recordkeeping

1. Districts Without a Public Defender

In counties without a public defender office, the clerk of superior court must maintain:

- A current copy of the local appointment plan for non-capital criminal and non-criminal cases; and
- A list of attorneys eligible for appointment under that plan.

This responsibility is governed by G.S. 7A-343. Clerks should consult the Rules of Recordkeeping for the Office of the Clerk of Superior Court for additional guidance.

2. Districts With a Public Defender or Special Counsel Program

- The Public Defender must maintain the approved plan for appointments in their district and a list of eligible attorneys.
- In special counsel districts, the special counsel office must maintain the plan and attorney list for that district, as certified by the IDS Director.

3. Appointment Forms

Courts must use a form approved by the IDS Director to enter all orders appointing counsel.

(f) Other Appointment Methods Permitted

These rules do not prevent IDS from assigning qualified counsel through alternative programs, plans, or contracts designed to improve the quality, efficiency, or cost-effectiveness of services.

All such alternatives must be approved by the IDS Director. The IDS Commission may adopt and enforce rules that override a local appointment plan when necessary.

Authority: G.S. 7A-452(a); 7A-498.3(a),(b1), (c); 7A-498.5(c), (d), (e); 122C-270

For Commentary to Rule 1.5 see “Section 1.5 – Appointment Procedure” of Practitioners Guide.

Rule 1.6 – Waiver of Counsel

(a) Standard for Waiver

An indigent person may waive the right to have a lawyer at any in-court proceeding, but only if the waiver is:

- In writing, and
- Accepted by the court on the record, with a finding that the person fully understands their rights and the consequences of waiving them.

When making this finding, the court must follow the requirements in G.S. 15A-1242, and consider factors such as the person's:

- Age
- Education
- English language ability
- Mental condition
- The complexity of the case

(b) Appointment of Standby Counsel in Criminal Cases

If a defendant chooses to represent themselves in a criminal case, the trial judge may appoint standby counsel.

Standby counsel may assist the defendant upon request and may bring important legal matters to the court's attention.

Authority: G.S. 7A-457; G.S. 15A-1243

1.7 Withdrawal of Appointed Counsel

(a) Scope of Representation

Unless otherwise provided by law, appointed counsel must continue representation through:

- Entry of judgment at the trial level,
- Advising the client of their right to appeal, and
- Filing a notice of appeal, if requested, or until the appeal deadline passes.

Nothing in this rule alters an attorney's ethical obligations under state law or the Rules of Professional Conduct.

(a1) Conflicts of Interest

Upon appointment, counsel must promptly determine whether a conflict of interest exists:

- If a non-waivable conflict is identified, counsel must file a timely motion to withdraw under subsection (b).
- If a waivable conflict exists, counsel must either:
 - Obtain the client's informed written consent in compliance with the Rules of Professional Conduct, or
 - File a motion to withdraw.

(b) Withdrawal from Representation

At any stage of a trial or retrial, a judge may allow an attorney to withdraw if:

- The attorney files a motion to withdraw, and

- The judge finds good cause for the withdrawal.

If the judge grants the motion, new counsel must be appointed according to Rule 1.5.

(c) Contract Counsel

Attorneys working under contract with IDS must follow the terms of their contract when withdrawing from a case. Termination of a contract shall not be the sole grounds for withdraw.

If the contract does not specify a process, the withdrawal must follow subsections (a) and (b) above.

Authority: G.S. 7A-498.2(b); 7A-498.3(a), (c); 7A-498.5(c), (d); 15A-143; 15A-144

For Commentary to Rule 1.7 see “Section 1.9 – Withdrawal of Appointed Counsel” of Practitioners Guide.

1.8 Contracts

The IDS Office may enter into contracts for legal representation and related services in any case for which it is responsible.

Contracts may include:

- The assignment of specific attorneys to certain case types or court sessions; and
- Compensation at a fixed or negotiated rate.

All contracts must be approved by the IDS Director.

Authority: G.S. 7A-498.2(b); 7A-498.3(a), (c), (d); 7A-498.5(c), (d), (f)

Rule 1.9 – Payment of Appointed Counsel

(a) Compensation at the Trial Level

1. Time Must Be Prorated for Multiple Cases

If an attorney works on multiple cases at the same time or waits in court for more than one case, that time must be divided proportionally across all affected cases.

2. Fee Orders Required

When representation ends in a non-capital criminal or non-criminal case, the presiding trial judge must enter an order setting the attorney’s fee.

The judge will review the time claimed and approve an appropriate amount based on:

- The nature and complexity of the case;
- The effort required; and
- The attorney's responsibilities.

3. Hourly Rates Set by Policy

Unless the IDS Director has given prior written approval due to extraordinary circumstances, all time must be paid at the hourly rate set by the IDS Commission and published in the current IDS policy.

The IDS Commission determines the effective date of any rate changes based on available funding.

4. Preparation Time Is Compensable

Attorneys may be compensated for preparation time even if a hearing or trial is later cancelled. In extraordinary superior court cases, a judge may approve interim fees before final disposition.

5. Which Judge Sets the Fee

- For cases resolved in district court, the district court judge sets the fee.
- For cases resolved in superior court, the superior court judge does so.
- For cases appealed from district to superior court, either judge may set the fee, depending on local practice.

Defendants must be given notice and a chance to be heard before the fee is entered.

6. Alternative Fee Structures

Districts may use other approved compensation models, such as:

- Flat per-case rates; or
- Per-session rates.

Any such method must be approved by the IDS Director and consistent with IDS policies.

7. Deadlines for Submitting Fee Applications

In non-capital cases, attorneys must submit fee applications to the court and IDS no later than ninety (90) days after final disposition at the trial level.

8. Format and Filing Requirements

Fee applications must comply in form and substance with current IDS Attorney Fee and Expense Policies. [INSERT LINK](#)

- Fee applications must comply with IDS Attorney Fee and Expense Policies.
- Attorneys are not required to submit timesheets with their fee applications unless they have been requested to do so by a judge or by IDS. However, attorneys must maintain billing and timekeeping records that support their fee applications for five years after submission, and such records must be made available to IDS upon request.
- Attorneys must maintain supporting billing records for five years and make them available upon request.
- Fee applications must be electronically filed with IDS using the OASIS system and simultaneously submitted to the court per AOC procedures.

9. Authorized Expenses

The IDS Director sets the rates for expenses related to legal representation in non-capital criminal and non-criminal cases. While the Director reserves the right to review and adjust any court-approved expense award to ensure conformity with IDS policies and rates established under the IDS Act, this authority does not impose an obligation to review or correct every award.

(b) Fee Orders

Judges must enter payment orders on a form approved by the IDS Director.

The clerk will electronically file the order using the system and procedures designated by the Administrative Office of the Courts.

(c) Fee Schedules

Pursuant to its statutory authority under G.S. 7A-498.5(f), the IDS Commission sets the fee schedules for the compensation of attorneys in non-capital criminal and non-criminal cases. The applicable fee schedules are available at: [<https://www.ncids.org/assigned-counsel/rates-fee-applications/>](<https://www.ncids.org/assigned-counsel/rates-fee-applications/>.)]

(d) Contract Counsel

Attorneys who work under contract with IDS will be paid according to the terms of their contract.

(e) Outside Compensation Is Prohibited

Once counsel is appointed, the attorney may not accept payment from the client or any other source for services covered by the appointment—except as allowed under IDS policy.

If a third party provides funds for non-attorney services (e.g., an expert), the attorney must:

- Place the funds in a trust account; and
- Provide an accounting to both the contributor and the IDS Director.

New subsection 1.9(a)(7) effective January 1, 2026 sets deadline for filing of fee application with trial court at ninety (90) days following final disposition.

Authority: G.S. 7A-458; 7A-498.5(f)

For Commentary to Rule 1.9 see “Section 1.9 – Payment of Appointed Counsel” of Practitioners Guide.

Rule 1.10 – Supporting Services

In non-capital criminal and non-criminal cases, the court may approve payment for services that support legal representation, including expert witnesses, investigators, or other necessary service providers.

All requests and payments must follow current IDS rules and policies.

Authority: G.S. 7A-454; 7A-498.3(c); 7A-498.5(c)(6)

Rule 1.10A – Authority to Implement Other Programs, Plans, and Contracts

The IDS Director may approve programs, plans, or contracts for expert, investigative, or other support services in non-capital cases, as long as they promote quality, efficiency, or cost savings.

These alternative methods of delivering services must comply with IDS policies and be approved by the IDS Director.

Authority: G.S. 7A-454; 7A-498.3(c); 7A-498.5(c)(6)

Rule 1.11 – Recoupment of Fees

(a) General Rule

If required by law, individuals who are appointed counsel must repay the cost of that representation. This includes:

- Fees paid to private assigned counsel, or
- The value of services provided by a public defender or contract attorney.

The judge who sets the fee or determines the value of services is also responsible for setting the amount to be repaid.

The court must ensure the person:

- Is notified of potential repayment, and
- Has a reasonable opportunity to be heard on the issue.

(b) Public Defender and Contract Counsel Valuation

When recoupment is required for services provided by a public defender or contract attorney, the court must determine the value of those services using the same method and hourly rates applied to private assigned counsel under Rule 1.9.

(c) Civil Proceedings and Non-Criminal Contexts

Individuals may be required by law to repay the cost of appointed counsel in non-criminal (civil) cases, such as child welfare and juvenile delinquency proceedings. If recoupment is ordered in any such case, the procedures in this rule must be followed. Specifically, the court must ensure that:

- The person is notified of potential liability,
- The person is given an opportunity to be heard, and
- The court assesses repayment fairly, including determining the value of services rendered by appointed counsel, public defenders, or contract counsel.
- While the specific statutory procedures may vary (see G.S. 7A-450.1 through -450.4 for civil matters and G.S. 7A-455 for criminal matters), the underlying due process protections remain consistent across case types.

Authority: G.S. 7A-450.1 through -450.4; 7A-455; 7A-498.5(c)(8)

Attachment A – Rule History

Rele	Rules for the Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level
Rule Number:	Part 1
Custodian:	Assistant Director and General Counsel
Effective Date:	2026.01.01
Next Review Date:	2031.001.01, unless reviewed earlier
Location:	
Revision History	See Attachment B, “Revision History for Part 1: Rules for the Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level”

Attachment B – Revision History for Part 1: Rules for the Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level

1.1 Coverage and Definitions	<p>Consolidated related subsections (former 1.1(1)–1.1(4); effective January 1, 2026</p> <ul style="list-style-type: none"> • Subsection (1) amended effective March 15, 2010 • Subsection (2) amended effective May 6, 2005 • Subsection (3) amended effective February 27, 2009 • New subsection (3a) adopted effective March 15, 2010 and amended effective May 29, 2015 • <i>Commentary</i> to Rule 1.1, subsection (1) amended effective November 4, 2005, July 1, 2009, and May 29, 2015
1.2 Entitlement to Counsel (NEW)	<p>Converted from placeholder to substantive rule; codifies longstanding statutory interpretation and court practices. New rule effective January 1, 2026</p>
1.3 Notification Responsibilities	<p>New subsection (a) formerly part of commentary only; elevated to a rule with structured responsibilities for judicial officials, PDs, and clerks. Effective January 1, 2026.</p>
1.4 Determining Indigency	<p>Streamlined and reorganized from original version; maintains statutory language while adopting plain-language structure. Effective January 1, 2026.</p>
1.5 Appointment Procedure	<p>Clarified appointment mechanisms for districts with and without public defenders; added delegation standards and attorney review rights; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Subsection (a) amended effective February 10, 2005 and December 10, 2010 • Subsections (b) amended effective November 16, 2001 and July 1, 2009 • Subsection (c) amended effective December 10, 2010 and May 29, 2015 • Subsection (d) amended effective July 8, 2005, February 16, 2007, and May 29, 2015] New subsection (d1) adopted effective February 1, 2010 • Subsection (f) amended effective November 16, 2001 and May 29, 2015
1.6 Waiver of Counsel	<p>Simplified structure and clarified required findings under G.S. 15A-1242; effective January 1, 2026.</p>
1.7 Withdrawal of Appointed Counsel	<p>Added new subsection (a1) on conflicts; clarified contract withdrawal requirements; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Subsection (a1) adopted effective September 24, 2010
1.8 Contracts	<p>Reaffirmed IDS Director’s authority and cross-referenced governing statutes; minor edits for clarity. Effective January 1, 2026.</p>

<p>1.9 Payment of Appointed Counsel</p>	<p>Reorganized for readability; codified digital filing, supporting documentation rules, and fee application deadline. New structure effective January 1, 2026.</p> <ul style="list-style-type: none"> • Subsection (a) amended effective February 15, 2002, May 6, 2005, August 13, 2007 • February 1, 2008, February 27, 2009, June 5, 2009, June 1, 2011, and May 29, 2015 • Subsection (b) amended effective May 6, 2005 • Subsection (e) amended effective September 15, 2006 • Commentary to subsection (e) amended effective March 7, 2014
<p>1.10 Supporting Services</p>	<p>Edited for clarity and aligned with standardized expense policies; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Section amended December 9, 2011
<p>1.10A Alternative Service Programs</p>	<p>Added new rule authorizing IDS Director to implement alternative delivery models for non-attorney services; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Section added October 29, 2021
<p>1.11 Recoupment of Fees</p>	<p>Expanded to include civil cases; clarified due process requirements and valuation standards; effective January 1, 2026.</p> <ul style="list-style-type: none"> • Subsections (a) and (b) and commentary amended effective September 19, 2014

Part 1

Rules for the Continued Delivery of Services in NonCapital Criminal and Non-Criminal Cases at the Trial Level

This first part addresses the procedure for appointing and compensating counsel in all cases subject to the oversight of the Office of Indigent Defense Services (IDS Office), except for capital cases, which are covered by Part 2 of these rules, appellate cases, which are covered by Part 3 of these rules, and cases in which the State is obligated to provide legal assistance and access to the courts to inmates in the custody of the Department of Correction, which are covered by Part 4 of these rules. Parts 1 through 3 of these rules are authorized by the Indigent Defense Services Act of 2000 (IDS Act), S.L. 2000-144, Senate Bill 1323, and apply to cases pending on or after July 1, 2001. Part 4 of these rules is authorized by § 14.9(a) of S.L. 2005-276, Senate Bill 622.

~~The principal aim of this first part is to ensure that the system for appointing and compensating counsel at the trial level in non-capital criminal and non-criminal cases is not disrupted. Because of the sheer number of such cases handled by appointed counsel, these rules continue most of the current practices and procedures, allowing the IDS Office to consider and implement changes over time after considering the suggestions and advice of the bar, bench, and other interested persons.~~

~~The rules are drawn in large part from the North Carolina General Statutes (G.S.), as revised by the IDS Act, and Section D.0400 and D.0500 of the Rules and Regulations of the North Carolina State Bar (State Bar Rules). That section of the State Bar Rules is no longer effective beginning July 1, 2001, because the authorization for those rules, in former G.S. 7A-459, was repealed effective that date.~~

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

These rules may be changed by the IDS Commission pursuant to its authority.

1.1 Coverage and Definitions

This rule applies to all **non-capital criminal and non-criminal cases at the trial level** where the Office of Indigent Defense Services (IDS) is responsible for providing and overseeing legal representation.

It includes representation in:

- District and superior court proceedings; and
- Post-conviction proceedings where counsel is appointed under G.S. 7A-451(a)(3) or G.S. 15A-1421.

This rule does not apply to:

- Capital cases, which are governed by Part 2;
- Appellate cases, governed by Part 3;
- Inmate legal assistance cases, governed by Part 4.

For definitions of capital case, capital appeal, and related terms, see Section 1.0 of the Practitioners Guide.

~~(1) — This part applies to all non-capital criminal and non-criminal cases at the trial level, including cases in which a court has appointed counsel pursuant to G.S. 7A451(a)(3) and G.S. 15A-1421 and the applicable case law to investigate, and, if appropriate, prepare, file, and litigate a non-capital motion for appropriate relief or other non-capital post-conviction motion in state court. The terms “non-capital criminal case” and “non-criminal case” refer only to such cases in which the IDS Office is responsible for the provision and oversight of legal representation. The term “trial level” includes all cases in district or superior court.~~

~~(2) — Except as otherwise provided in these rules, this part does not apply to capital cases, as defined in Part 2 of these rules, at the trial, appellate, or post-conviction level. The term “capital offense” means any case involving a first-degree murder charge or charge in which the degree of murder is undesignated, except cases in which the defendant was under 18 years of age at the time of the offense and not potentially punishable by death, and any non-capital criminal charge brought contemporaneously with or subsequently joined with such murder charge. The term “capital appeal” means any appeal of right taken from a sentence of death, any appeal from offenses joined with a capital appeal, and any petition for extraordinary writ that is filed in the Appellate Division prior to the entry of final judgment in the Trial Division on behalf of a defendant charged with a capital offense. The term “capital post-conviction” mean any case in which a death sentence has been affirmed on direct appeal by the Supreme Court of North Carolina.~~

~~(3) — Except as otherwise provided in these rules, this part does not apply to appellate cases, as defined in Part 3 of these rules. The term “appellate case” means any case in which a person is entitled to representation in the appellate courts pursuant to G.S. 7A451 and Part 3 of these rules, including a petition for writ of certiorari or other extraordinary writ that is filed in the Appellate Division prior to the entry of final judgment in the Trial Division.~~

~~—— (3a) Except as otherwise provided in these rules, this part does not apply to cases in which the State is obligated to provide legal assistance and access to the courts to~~

~~inmates in the custody of the Division of Adult Correction pursuant to G.S. 7A-498.3(a)(2a), as defined in Part 4 of these rules.~~

~~(4) — When these rules describe the functions that a court performs, the term “court” includes clerks of superior court.~~

~~[Subsection (1) amended effective March 15, 2010]~~

~~[Subsection (2) amended effective May 6, 2005]~~

~~[Subsection (3) amended effective February 27, 2009]~~

~~[New subsection (3a) adopted effective March 15, 2010 and amended effective May 29, 2015]~~

~~[Commentary to Rule 1.1, subsection (1) amended effective November 4, 2005, July 1, 2009, and May 29, 2015]~~

~~Authority: G.S. 7A-452(c)(1); 7A-498.3(a)~~

~~Commentary~~

~~—— **Subsection (1):** G.S. 7A-498.3(a) places virtually all cases in which a person is entitled to counsel at state expense under the oversight of the IDS Office. The cases covered are:~~

- ~~1. cases in which an indigent person is entitled to legal representation under G.S. 7A-451 and G.S. 7A-451.1;~~
- ~~2. cases in which the IDS Office is designated by other statutes as responsible for providing legal representation; and~~
- ~~3. cases in which an indigent person is subject to a deprivation of liberty or other constitutionally protected interest, and is entitled by law to legal representation.~~

~~Most of the cases in which a person has a right to counsel fall within the first category—that is, cases designated in G.S. 7A-451 and 7A-451.1. Readers should consult those statutes for a complete listing of proceedings.~~

~~—— The General Assembly has recognized a right to counsel in miscellaneous proceedings not covered by G.S. 7A-451 and 7A-451.1, and with respect to most of those proceedings the provision of counsel is subject to the oversight of the IDS Office. The covered cases include:~~

- ~~▪ cases in which a law enforcement officer has seized property from an unknown or unapprehended defendant, or from a defendant willfully absent from the jurisdiction, and the lawful owner petitions a court for return of the property pursuant to G.S. 15A-11.1(b);~~
- ~~▪ cases in which a person is subject to a non-testimonial identification procedure under G.S. 15A-279(d);~~

- ~~cases in which a material witness appears for a hearing on a motion for an order assuring his or her attendance at a criminal proceeding under G.S. 15A-803(d);~~
- ~~cases in which a criminal defendant elects to represent himself or herself and the court determines that standby counsel should be appointed pursuant to G.S. 15A-1243;~~
- ~~cases in which a person is taken or charged on any order of arrest for default of bail, or on surrender of bail, or in execution of arrest for any debt or damages rendered in any action, and such person petitions the court for provisional release pursuant to G.S. 23-30.1; and~~
- ~~cases in which a minor has been voluntarily admitted to a mental health or substance abuse facility pursuant to G.S. 122C-224.1.~~

~~The third category of cases under IDS oversight are cases in which the courts have recognized a right to appointed counsel. For example, the defendant has a constitutional right to counsel in child support contempt proceedings in which the defendant faces a sentence of actual imprisonment. See *McBride v. McBride*, 334 N.C. 124, 431 S.E.2d 14 (1993) (finding right to counsel whether contempt proceeding is designated as civil or criminal).~~

~~**Subsections (2) and (3):** Capital cases are addressed in a separate part because of the differing treatment of those cases in the IDS Act. In non-capital criminal cases, the court appoints counsel pursuant to rules adopted by the IDS Office. In capital cases, the IDS Director appoints counsel directly. See G.S. 7A-452(a) (generally); see also G.S. 7A-451(e) (capital post-conviction cases). Appellate cases are also dealt with separately because of the relatively small number of such cases. The IDS Office is in a position to establish and administer procedures for the appointment and compensation of appellate counsel, relieving trial judges of that burden.~~

~~Effective May 6, 2005, subsection (2) was amended to clarify that the term “capital case” refers only to cases in which the defendant is eligible to receive the death penalty, and does not refer to those cases in which life imprisonment without parole is the maximum possible punishment because the defendant was under the age of 18 at the time of the offense. See G.S. 14-17; *Roper v. Simmons*, 2005 U.S. LEXIS 2200, 125 S. Ct. 1183 (2005). Effective February 27, 2009, subsection (3) was amended to clarify the definition of an “appellate case” and to provide that litigation of an extraordinary writ in the Appellate Division prior to the entry of a final judgment in the Trial Division is not within the scope of appointed trial counsel’s representation.~~

1.2 Entitlement to Counsel

In most cases, the court determines whether a person is entitled to appointed counsel at state expense. This authority is set out in **G.S. 7A-452(a)**.

In some situations, North Carolina law allows other officials—such as clerks of superior court or public defenders—to make a **preliminary determination** of indigency and entitlement. All appointments must comply with IDS rules and policies.

~~[No rules adopted; reserved for future use]~~

Commentary

~~Under revised G.S. 7A-452(a), the court continues to determine whether a person is entitled to counsel at state expense. In making this determination, the court must decide, first, whether the person is indigent, although in some matters, such as juvenile delinquency proceedings, the person is presumed to be indigent. Second, the court must determine whether the person is entitled to counsel in the particular proceeding. Rule 1.4, below, governs the first inquiry concerning indigency. The IDS Office has not adopted rules concerning the second inquiry, the right to counsel in particular proceedings, because the IDS Act did not change the extent of a person's rights under the United States and North Carolina constitutions, statutes, and case law; it only transferred to the IDS Office the authority to oversee the provision of legal representation in such cases. For a list of cases subject to IDS Office oversight, see commentary to Rule 1.1, above. In cases subject to this part, once the court determines that a person is indigent and has a right to counsel, appointment of counsel is governed by Rule 1.5, below.~~

~~In some instances, North Carolina law authorizes someone other than a judge to make at least a preliminary determination of indigency and entitlement to counsel. The IDS Act did not materially change those provisions, although it did provide that appointment of counsel is subject to rules adopted by the IDS Office. For example, G.S. 7A-452(e) continues to authorize the clerk of court to determine whether a person is indigent and entitled to counsel, subject to review by a judge. See also G.S. 122C-269(b) (describing clerk's responsibilities in involuntary commitment proceedings). In counties with a public defender office, G.S. 7A-452(a) continues to provide that the Public Defender may make this determination preliminarily and may assign himself or herself or an assistant public defender to represent the person, subject to review by the court.~~

1.3 Notice of Rights Notification Responsibilities

(a) Generally

~~[No rules adopted; reserved for future use]~~

(a) Notice to Defendants

Judicial officials must notify individuals of their right to counsel at appropriate stages in criminal proceedings. These requirements are not changed by the IDS Act and include:

- G.S. 15A-511 – Magistrate at initial appearance;
- G.S. 15A-603 – District court judge at first appearance in felony cases;
- G.S. 15A-942 – Superior court arraignment;
- G.S. 15A-1101 – District court arraignment in misdemeanor cases.

~~**(b) Responsibilities of Public Defenders and Clerks for In-Custody Defendants**—In counties with a public defender office, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the Public Defender. The Public Defender shall make a preliminary determination of the person’s entitlement to his or her services and shall proceed accordingly, including notifying the court of the person’s status or appointing himself or herself to represent the person pending a determination of the court. The court shall make the final determination. In counties without a public defender office, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the clerk of superior court, who shall proceed accordingly, including bringing the person’s situation to the attention of a district court judge for determination of the right to counsel and review of pretrial release conditions.~~

(b) Notification of Public Defender or Clerk

If a person remains in custody for more than **48 hours without counsel**, the custodian must notify the appropriate party:

- In counties with a public defender, notify the **Public Defender**, who will:
 - Make a preliminary determination of eligibility;
 - Notify the court or assign themselves to the case; and
 - Defer to the court for a final decision on entitlement.
- In counties without a public defender, notify the **clerk of superior court**, who must:
 - Bring the case to a **district court judge** for a decision on appointment and pretrial release review.

Prompt action is especially important in cases involving:

- Probation violations
- Orders for arrest (e.g., failure to appear)
- Surrenders by sureties
- Misdemeanors in districts without routine first appearances

Delay in appointing counsel may result in unnecessary pretrial detention and court inefficiencies.

Authority: G.S. 7A-452; 7A-453

Commentary

~~———— **Subsection (a):** A number of statutes obligate judicial officials to notify individuals of their right to counsel, describing the timing and basic content of the notice. In criminal cases, for example, *see* G.S. 15A-511 (notice by magistrate at initial appearance); G.S. 15A-603 (notice by district court judge at first appearance in felony case); G.S. 15A-942 (notice by superior court judge at arraignment); G.S. 15A-1101 (procedure for trial of misdemeanors in district court is in accordance with trial procedure in superior court, including requirement that district court judge notify defendant of right to counsel when arraigning defendant). The IDS Act did not alter these requirements. The IDS Office is considering adopting additional procedures to assist judicial officials in notifying individuals of their right to counsel, after considering the suggestions and advice of the bar, bench, and other interested persons.~~

~~———— **Subsection (b):** This subsection implements the requirements of revised G.S. 7A-453, which deals with the situation in which a person has been in custody for more than 48 hours and has no counsel. Revised G.S. 7A-453 is not materially different than the former version of that statute; it has always required that notice be given, either to the Public Defender or clerk, concerning in-custody defendants without counsel. The revised statute merely provides that in counties designated by the IDS Office, the custodian of the person must notify the IDS Office's designee. In counties not designated by the IDS Office, the custodian must notify the clerk of superior court. Through the above rule, the IDS Office makes the Public Defender its designee in counties that have a public defender office. In counties that do not have a public defender office, the IDS Office makes no designation; therefore, the custodian should continue to notify the clerk of court.~~

~~———— If a person is in custody without counsel, the Public Defender should bring the person's situation to the attention of the court, which may appoint counsel in accordance with Rule 1.5, below. The Public Defender also may tentatively assign himself or herself to represent the person pursuant to G.S. 7A-452(a).~~

~~———— Likewise, the clerk of court should bring the person's situation to the attention of a judge as soon as feasible; pursuant to G.S. 7A-452(c) and Rule 1.5, below, the clerk also may appoint counsel. If the clerk does not appoint counsel for an in-custody defendant, it is particularly important for the clerk to alert a district court judge, especially in cases involving probation violations, orders for arrest for failing to appear, surrenders by sureties, and misdemeanors in those judicial districts that do not routinely hold first appearances. In those cases, a defendant's first scheduled court date may be several days or even weeks after he or she is taken into custody. If counsel is not~~

~~appointed until that first court date, the case will likely have to be continued to a later date, resulting in inefficient use of court time, longer pretrial custody for defendants, and greater demands on limited jail resources.~~

1.4 Indigency Determining Indigency

(a) Standard

~~An indigent person is a person who is financially unable to secure legal representation or provide other necessary expenses of representation at the time the expenses are required.~~

~~(b) Procedure for Determining Indigency~~

~~(1) Before appointing counsel in cases in which indigency is a condition of appointment, the court shall require the defendant or respondent to complete and sign under oath an affidavit of indigency on a form approved by the IDS Director.~~

~~(2) The court shall make reasonable inquiry of the defendant or respondent under oath to determine the truth of the statements made in the affidavit of indigency.~~

~~(3) The affidavit of indigency shall be filed in the records of the case.~~

~~(4) Based on the affidavit of indigency, the affiant's statements to the court on this subject, and such other information as may be brought to the attention of the court during the proceedings, the court shall determine whether the defendant or respondent is indigent.~~

~~(5) The question of indigency may be determined or redetermined by the court at any stage of the action or proceeding.~~

~~(6) If at any stage in the action or proceeding a person previously determined to be indigent becomes financially able to secure legal representation and provide other necessary expenses of representation, he or she must inform counsel appointed to represent him or her of that fact, who must promptly inform the court.~~

(a) Definition

A person is considered **indigent** if they cannot afford to hire a lawyer or pay other necessary legal expenses at the time those expenses arise. See **G.S. 7A-450(a)**.

(b) Court Procedure

Before appointing counsel, the court must:

1. Require the person to complete a sworn **affidavit of indigency** (on a form approved by the IDS Director);

2. Make reasonable inquiry under oath to confirm the information;
3. File the affidavit in the case record; and
4. Decide whether the person is indigent based on the affidavit, statements, and any other information presented.

The court may reconsider indigency at any point during the case.

If someone who was previously found indigent becomes financially able to pay for counsel or related expenses, they must inform their attorney, who must notify the court.

Authority:

- G.S. 7A-450, -451, -452, -453
- G.S. 7A-498.3(a), (b)
- G.S. 7A-498.5(c)(8)

Authority: ~~G.S. 7A-450; 7A-452; 7A-498.3(b); 7A-498.5(c)(8)~~

Commentary

~~Revised G.S. 7A-452 continues to require the court in most cases to determine whether a person is indigent for purposes of receiving counsel at state expense; however, under G.S. 7A-498.3(b) and 7A-498.5(c)(8), the determination is to be made in accordance with policies and procedures adopted by the IDS Office.~~

~~———— **Subsection (a):** The IDS Act did not alter the basic statutory definition of indigency in G.S. 7A-450(a), which is set forth in this rule. The court should continue to follow that definition and the North Carolina cases interpreting it. *See, e.g., State v. Hoffman*, 281 N.C. 727, 190 S.E.2d 842 (1972) (“An indigent is one who does not have available, at the time they are required, adequate funds to pay a necessary cost of his defense.”).~~

~~———— The North Carolina cases direct that various factors, such as the person’s employment, income, and assets, be weighed in determining whether a person is indigent. The cases do not establish a precise measure of indigency, however. The specific dollar amounts discussed in older cases are not particularly useful guides in assessing a person’s ability to hire a lawyer now. To assist judicial officials and others in determining indigency, the IDS Office is working on developing more detailed standards and expanding on the basic statutory definition of indigency.~~

~~———— **Subsection (b):** Subsections (1) through (4) substantially repeat the procedure for determining indigency in former Rule D.0402 of the State Bar Rules. The form affidavit of indigency referred to in subsection (1) is the same form that has been used by the AOC (AOC-CR-226). Subsections (5) and (6) substantially repeat the requirements in G.S. 7A-450(c) and (d). Courts should continue to follow any other statutory requirements to assure that counsel is provided as appropriate. For example, although a district court~~

judge reviews indigency at the defendant's first appearance in a felony case, a superior court judge must re-examine the question if the defendant appears without counsel in superior court. See G.S. 15A-942 (requiring superior court to do so at arraignment).

Subsection (b) also recognizes that in some cases, indigency is not a condition of appointment of counsel, for example, in cases in which a juvenile is alleged to be delinquent. See G.S. 7B-2000.

1.5 Appointment Procedure

~~(a) Districts Without a Public Defender Office~~

~~(1) In judicial districts that do not have a public defender office, each judicial district bar or county bar association shall adopt a plan or plans for the appointment by the court of qualified members of the private bar to represent indigent persons in all cases subject to this part. Any plan adopted by a judicial district bar or county bar association shall provide for appointment of counsel on a systematic and impartial basis. To the extent a judicial district bar or county bar association plan does not address any categories of cases, the court shall appoint counsel in those cases on a systematic and impartial basis. A plan may be applicable to the entire district, or, at the election of the judicial district bar or county bar association, separate plans may be adopted for use in each separate county within the district.~~

~~(2) Except as otherwise provided by the IDS Office, the plan or plans for a district or county in effect on June 30, 2001, shall govern the method by which counsel are thereafter selected in that district or county for appointment in non-capital criminal and non-criminal cases at the trial level. A plan is considered to be "in effect" on June 30, 2001, if by that date it has been adopted by the judicial district bar or county bar association, approved by the North Carolina State Bar, and certified to the clerk of superior court of the county to which the plan is applicable by the Secretary of the North Carolina State Bar.~~

~~(3) Beginning July 1, 2001, any revisions in a district or county plan must be adopted by the judicial district bar or county bar association and approved by the IDS~~

~~Commission, following which the IDS Director shall certify the revised plan or plans to the clerk of superior court to which the plan or plans are applicable.~~

~~(4) Any provisions in district or county plans concerning appointment of counsel in capital or appellate cases, as defined in Parts 2 and 3 of these rules, shall be of no effect as of July 1, 2001.~~

~~(5) Any provisions in district or county plans that are inconsistent with rules now or hereafter adopted by the IDS Office shall be of no effect as of July 1, 2001.~~

(a) Districts Without a Public Defender Office

1. Uniform Plan Required

Each judicial district must have a plan for appointing counsel in non-capital cases. The plan may apply to the entire district or to individual counties, as determined by the local bar.

2. Plan Revisions

Changes to a district or county plan must be adopted by the relevant bar and approved by the IDS Commission or its designee. Once approved, the IDS Director will certify the plan and provide it to the clerk of superior court in the affected area.

~~(b) Districts with a Public Defender Office~~

~~(1) _____ No later than November 1, 2001, in judicial districts with a public defender office, the Public Defender shall submit to the IDS Director a proposed plan for the appointment of counsel in all cases subject to this part. The proposed plan shall provide for the making of appointments under the oversight of and pursuant to procedures adopted by the Public Defender.~~

~~(2) _____ In developing the proposed plan, the Public Defender shall consult with the IDS Director and with the judicial district bench and bar in which the public defender's office is located. The IDS Director shall thereafter submit the proposed plan to the IDS Commission, which may approve the plan as submitted, modify it, or reject it. The plan adopted by the IDS Commission shall become the plan for appointment of counsel in that judicial district.~~

~~(3) _____ After the Commission has adopted the initial plan for a judicial district with a public defender office, the IDS Director may, after consulting with the Public Defender, modify the plan and the requirements and procedures for appointing counsel in that judicial district as necessary to effectuate the purposes of the IDS Act. If any modifications being considered by the IDS Director substantially change the plan, the IDS Director shall submit the proposed changes to the IDS Commission for approval.~~

~~(4) _____ Until a Public Defender's plan is approved by the IDS Commission, the court shall continue to appoint counsel in accordance with current procedure.~~

~~(5) _____ The Public Defender shall not be appointed to represent, and shall not assign counsel to represent, a juvenile alleged to be abused, neglected, or dependent.~~

(b) Districts With a Public Defender Office

1. Plan Submission

The Public Defender must submit a proposed appointment plan to the IDS Director. The plan must describe how counsel will be appointed under the Public Defender's oversight.

2. Consultation and Approval

The Public Defender must consult with the IDS Director and the local bench and bar. The IDS Commission may approve, modify, or reject the plan.

3. Modifications After Approval

After a plan is adopted, the IDS Director may modify it in consultation with the Public Defender. Substantial changes must be approved by the IDS Commission.

4. Interim Procedures

Until a Public Defender's plan is approved, courts should continue making appointments using the existing procedure.

5. Limitations on Representation

In accordance with G.S. 7A-452 and the Public Defender's appointment plan approved by the IDS Commission pursuant to G.S. 7A-498.5(d), the Public Defender may only represent or assign counsel to represent persons entitled to counsel under the Indigent Defense Services Act and other applicable statutes. The Public Defender's authority to accept or assign cases is governed by the district or county appointment plan approved by the IDS Commission. The Public Defender shall not represent or assign counsel to represent juveniles alleged to be abused, neglected, or dependent, as those cases are not within the scope of the IDS Office's statutory authority under G.S. 7A-498.3(a).

(c) Districts with a Special Counsel Office

~~In judicial districts with a special counsel program, the court shall continue to appoint special counsel, pursuant to G.S. 122C-270, to represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the state facility. For cases assigned to a special counsel office that the office is unable to handle, the special counsel office shall adopt a plan for assigning such cases to qualified members of the private bar. The special counsel office shall submit any plan for approval and certification by the IDS Director.~~

In judicial districts with a special counsel program, the court must appoint special counsel under G.S. 122C-270 to represent indigent respondents at all hearings held at the state facility.

If the special counsel office cannot handle a case, it must adopt a plan for referring cases to qualified private attorneys. The IDS Director must approve and certify the plan.

(d) Appointments Pursuant to Plans

~~(1) — Except as otherwise provided by the IDS Director, all appointments of counsel in cases subject to this part shall be made in conformity with the plans described in this rule, unless the judge in cases subject to subsection (a), above, or the authority authorized to~~

~~make appointments in cases subject to subsections (b) and (c), above, deems it proper in the furtherance of justice to appoint as counsel for a person a lawyer who is not on the certified plan or list or who is not next in sequence on the list.~~

1. Counsel must be appointed from the appropriate list maintained by the clerk of superior court, as outlined in the approved district plan.

If no attorney on the list is available or willing to accept the case, the judge must first consult the IDS Director or their designee. If IDS is unable to arrange for qualified counsel within a reasonable time, the judge may appoint an attorney who:

- Is otherwise qualified under IDS standards; and
- Is a member of the district bar.

An attorney appointed under these circumstances is entitled to compensation at the IDS-approved rate.

~~(2) — No attorney shall be appointed as counsel for a person in a non-capital criminal or non-criminal case in a court of any district unless the attorney has consented to placement of his or her name on the list of attorneys subject to appointment or, if the attorney has not agreed to do so, has otherwise consented to be appointed. The attorney named in the appointment order shall not delegate to another attorney any material responsibilities to the client, including representation at critical stages of the case, unless the court finds in open court that the substitute attorney practices in the same law firm as the appointed attorney and is on the list of attorneys who are eligible for appointment to the particular case or has a contract with IDS to handle that type of case, that the client and the substitute attorney both consent to the delegation, and that the delegation is in the best interests of the client.~~

2. An attorney must either consent to be on the list or otherwise agree to the appointment.

An appointed attorney may not delegate important responsibilities—such as appearing at critical stages—unless:

- The substitute attorney works at the same firm;
- Is also eligible for appointment to the case type;
- Both the client and substitute attorney consent; and
- The court finds that the delegation is in the client's best interest.

~~(3) — No person for whom counsel is appointed shall be entitled to select or specify the attorney assigned to defend him or her.~~

3. —Clients May Not Choose Their Lawyer

A person who receives appointed counsel may not select the attorney who will represent them.

(d1) Right of Review from Denial of Attorney Application for Placement on Appointment List or Removal of Attorney from Appointment List Right to Review Appointment List Decisions

If an attorney is denied placement on or removed from one or more lists of attorneys subject to appointment in a judicial district or county pursuant to a plan authorized by subsection (a), (b), or (c), above, the attorney may seek review of that decision by the IDS Director or his or her designee in accordance with policies and procedures adopted by the IDS Office.

If an attorney is denied placement on, or removed from, a local appointment list under subsections (a), (b), or (c), they may request review by the IDS Director or their designee, in accordance with IDS policies and procedures. LINK TO POLICY

(e) Record Keeping Recordkeeping

(1) — ~~In districts without a public defender office, the clerk of superior court of each county, under the direction of the Administrative Office of the Courts pursuant to G.S. 7A-343(3) and (10), shall continue to file in his or her office, maintain, and keep current the plan for assignment of counsel in non-capital criminal and non-criminal cases, and a record of all counsel eligible for appointment under the plan, applicable to said county as certified by the Secretary of the North Carolina State Bar or IDS Director, as the case may be.~~

(2) — ~~No later than November 1, 2001, in districts with a public defender office, the Public Defender shall file in his or her office, maintain, and keep current the plan for assignment of counsel in non-capital criminal and non-criminal cases pursuant to subsection (b), above, and a record of all counsel eligible for appointment under the plan, applicable to said district as certified by the IDS Director.~~

1. Districts Without a Public Defender

In counties without a public defender office, the clerk of superior court must maintain:

- A current copy of the local appointment plan for non-capital criminal and non-criminal cases; and
- A list of attorneys eligible for appointment under that plan.

This responsibility is governed by G.S. 7A-343. Clerks should consult the Rules of Recordkeeping for the Office of the Clerk of Superior Court for additional guidance.

(3) — ~~In districts with a special counsel program, the special counsel shall file in his or her office, maintain, and keep current the plan for assignment of counsel pursuant to subsection (e), above, and a record of all counsel eligible for appointment under the plan, applicable to said district as certified by the IDS Director.~~

2. Districts With a Public Defender or Special Counsel Program

- The Public Defender must maintain the approved plan for appointments in their district and a list of eligible attorneys.
- In special counsel districts, the special counsel office must maintain the plan and attorney list for that district, as certified by the IDS Director.

~~(4) — Orders for the appointment of counsel shall be entered by the court on a form approved by the IDS Director.~~

3. -Appointment Forms

Courts must use a form approved by the IDS Director to enter all orders appointing counsel

(f) Authority to Implement Other Programs, Plans, and Contracts—Other Appointment Methods Permitted

~~Nothing in these rules shall prohibit assignment of otherwise qualified counsel to represent indigent defendants or respondents pursuant to programs, plans, or contracts that may be implemented from time to time to improve quality, efficiency, and economy where such programs, plans, or contracts are approved by the IDS Director. Nothing in these rules shall preclude the IDS Commission from adopting and enforcing rules that superecede a plan for appointment of counsel in any district.~~

These rules do not prevent IDS from assigning qualified counsel through alternative programs, plans, or contracts designed to improve the quality, efficiency, or cost-effectiveness of services.

All such alternatives must be approved by the IDS Director. The IDS Commission may adopt and enforce rules that override a local appointment plan when necessary.

~~[Subsection (a) amended effective February 10, 2005 and December 10, 2010]~~

~~[Subsections (b) amended effective November 16, 2001 and July 1, 2009]~~

~~[Subsection (c) amended effective December 10, 2010 and May 29, 2015]~~

~~[Subsection (d) amended effective July 8, 2005, February 16, 2007, and May 29, 2015]~~

~~[New subsection (d1) adopted effective February 1, 2010]~~

~~[Subsection (f) amended effective November 16, 2001 and May 29, 2015]~~

Authority: ~~G.S. 7A 452(a); 7A 498.3(a), (c); 7A 498.5(c), (d), (e); 122C 270~~

Commentary

~~— G.S. 7A 498.3 and 7A 498.5 grant the IDS Office broad authority to adopt rules, procedures, and standards for the appointment of counsel. *See also* G.S. 7A 452(a) (counsel shall be appointed by the court in non-capital criminal cases in accordance with rules adopted by the IDS Office). Because of the sheer number of non-capital criminal and non-criminal cases handled by appointed counsel each year, the IDS Office is not~~

~~presently able to consider or adopt improvements in the method for appointing counsel in such cases across the state. Accordingly, this rule continues much of the current practice and procedure. The text of this rule is based in large part on former Rule D.0404 of the State Bar Rules.~~

~~———— **Subsection (a):** The IDS Commission recognizes the continuing importance of district and county bar plans to the operation of the system, and in most respects this rule keeps the current plans in effect until the IDS Commission and IDS Office consider and implement changes. If a district bar or county bar association wishes to make changes to a plan after July 1, 2001, the changes must be approved by the IDS Commission rather than the North Carolina State Bar, which reflects the changes in authority implemented by the IDS Act. Many district and county bar plans that were in effect on June 30, 2001 do not specifically address non-criminal cases. If a plan does not address such cases, the court should appoint counsel on a systematic and impartial basis.~~

~~———— **Subsection (b):** Currently, in some districts with a public defender office, the judge assigns most indigent cases to the Public Defender, who then assigns to private counsel those cases that the office is unable to handle (either because of workload or conflict of interest reasons). All public defender offices are currently drafting plans that will expand this procedure to all districts with such an office. However, because all public defender offices are not in a position to begin performing this duty as of July 1, 2001, subsection (1) leaves current practices undisturbed until the Public Defender in the district submits a plan, which the IDS Director approves and certifies. The rule requires all Public Defenders to ensure that such a plan has been submitted, approved, and certified no later than November 1, 2001. Any plan adopted pursuant to this provision should address, among other things, the procedure to be followed when the public defender office has a conflict of interest. Subsection (b)(5) was amended effective July 1, 2009 to remove a reference to the appointment of guardians ad litem for juveniles in cases in which the Administrative Office of the Courts' guardian ad litem program is unable to represent the juvenile due to a conflict. The Administrative Office of the Courts is responsible for the appointment and compensation of guardians ad litem in those cases.~~

~~———— **Subsection (c):** This subsection establishes a procedure similar to subsection (b), requiring special counsel offices (in districts where located) to develop plans for assigning to private counsel cases that the office is unable to handle. This subsection was amended effective December 10, 2010 to delete a prior reference to special counsel continuing to represent indigent respondents on direct appeal. For all civil commitment appeals filed on or after October 1, 2006, S.L. 2006-264 directs that appellate counsel for the indigent respondent shall be appointed in accordance with rules adopted by the IDS Office. As with all other indigent appeals, Rule 3.2(b) was subsequently revised to provide that, for civil commitment appeals filed on or after October 1, 2006, the court shall appoint the Office of the Appellate Defender to represent the respondent.~~

~~———— **Subsection (d):** As in the past, appointments should be made in accordance with the plans for each district. The subsection makes some changes, however. First, subsection (1) clarifies that in the interest of justice an attorney may be appointed who is~~

~~not on the list regardless of whether the attorney regularly practices in the district. Second, subsection (2) prohibits appointment of an attorney unless the attorney consents to appointment, either by agreeing to be on the list or, if not on the list, by consenting to being appointed. Subsection (d)(2) was amended effective July 8, 2005 and again February 16, 2007 to clarify that an attorney appointed to a case may not delegate material responsibility for that case to another attorney who is not named in the appointment order. See *State v. Carter*, 66 N.C. App. 21, 23, 311 S.E.2d 5, 7 (1984); RPC 58 (1989). If an appointed attorney is unable to appear at a scheduled court appearance due to a conflict in another court, secured leave, illness, or a family emergency, subsection (d) does not prohibit the attorney from asking another lawyer to appear on his or her behalf and seek a continuance or argue a bond reduction motion for an incarcerated client. Subsection (d) also does not prohibit an appointed attorney who is unavailable from sending another lawyer to interview an incarcerated client. In exceptional cases where the appointed attorney is unavailable, the court may allow the appointed attorney to delegate client responsibilities at critical stages of a case if the court makes the specified findings. Subsection (d)(2) was amended effective May 29, 2015 to clarify that the same policies apply to delegated responsibilities in cases handled by attorneys who have a contract with IDS.~~

~~——— **Subsection (d1):** This subsection was adopted effective February 1, 2010 to provide that an attorney who has been denied placement on a local indigent list or removed from a local indigent list by a local indigent committee has the right to seek review of that decision by the IDS Director. This subsection does not create a right to seek review by the IDS Director of an order imposed by a court pursuant to its concurrent jurisdiction over the conduct of the lawyers who appear before it.~~

~~——— **Subsection (e):** The clerk of superior court continues to keep a record of current district or county bar plans and eligibility lists in districts without a public defender office. Public defender and special counsel offices will keep their plans on file in their offices. The court (judge or clerk) continues to make a record of appointments by entering the order of appointment on a revised version of the form that has been used by the AOC (AOC CR 224).~~

~~- **Subsection (f):** This subsection recognizes the authority of the IDS Office to modify appointment procedures and to adopt different methods for delivering services (such as contracting with attorneys rather than appointing them on a case-by-case basis). See G.S. 7A-498.3; G.S. 7A-498.5.~~

Authority: G.S. 7A-452(a); 7A-498.3(a),(b1), (c); 7A-498.5(c), (d), (e); 122C-270

For Commentary to Rule 1.5 see “Section 1.5 – Appointment Procedure” of Practitioners Guide.

1.6 Waiver of Counsel

~~(a) Standard~~

~~An indigent person who has been informed of his or her right to be represented by counsel at any in-court proceeding may, in writing, waive the right to in-court representation by counsel. Any such waiver of counsel shall be effective only if the court finds of record that at the time of waiver the indigent person acted with full awareness of his or her rights and of the consequences of the waiver. In making such a finding, the court shall follow the requirements of G.S. 15A-1242 and shall consider, among other things, such matters as the person's age, education, familiarity with the English language, mental condition, and the complexity of the matter.~~

(a) Standard for Waiver

An indigent person may waive the right to have a lawyer at any in-court proceeding, but only if the waiver is:

- In writing, and
- Accepted by the court on the record, with a finding that the person fully understands their rights and the consequences of waiving them.

When making this finding, the court must follow the requirements in G.S. 15A-1242, and consider factors such as the person's:

- Age
- Education
- English language ability
- Mental condition
- The complexity of the case

~~(b) Standby Counsel in Criminal Cases~~

~~In a criminal case, if the defendant has elected to proceed without the assistance of counsel, the trial judge in his or her discretion may determine that standby counsel should be appointed to assist the defendant when called upon, and to bring to the judge's attention matters favorable to the defendant upon which the judge should rule on his or her own motion.~~

~~{Subsection (a) amended effective May 29, 2015}~~

(b) Appointment of Standby Counsel in Criminal Cases

If a defendant chooses to represent themselves in a criminal case, the trial judge may appoint standby counsel.

Standby counsel may assist the defendant upon request and may bring important legal matters to the court's attention.

Authority: G.S. 7A-457; 15A-1243

Commentary

~~———— **Subsection (a):** Revised G.S. 7A-457(a) provides that waivers of in-court representation shall be in accordance with rules adopted by the IDS Office. The above rule restates the requirements for a valid waiver in G.S. 7A-457(a) and is intended to continue current practice and procedure on taking waivers until the IDS Office develops any additional rules or procedures. Until the IDS Office develops any such additional rules or procedures, courts can continue to use the same waiver of counsel form that has been used by the AOC (AOC CR 227). This rule does not affect the standard in G.S. 7A-457(c) with respect to waiver of counsel at out-of-court proceedings, such as during interrogation, which the IDS Act did not revise. This rule also does not deal with waiver of retained counsel by a non-indigent person. If a person has no counsel, the court should determine whether the person wishes to waive the right to both appointed and retained counsel. In criminal cases, if the person wishes to represent himself or herself, the court must conduct the inquiry required by G.S. 15A-1242 on self representation.~~

~~———— The IDS Act also did not affect the statutes that recognize that in some circumstances a person may lack the capacity to waive counsel. For example, G.S. 122C-268(d) provides that in cases in which a person is alleged to be mentally ill and subject to in-patient commitment, counsel shall be appointed if the person is indigent or refuses to retain counsel although financially able to do so. *See also* G.S. 35A-1107 (appointment of guardian ad litem for person alleged to be incompetent); G.S. 108A-105(b) (appointment of guardian ad litem for disabled adult). Similar provisions apply to minors who have a right to counsel. *See* G.S. 7B-600 and 601 (juvenile abuse and neglect proceedings); G.S. 7B-1101 (termination of parental rights where parent is a minor); G.S. 7B-2000 (juvenile delinquency proceedings).~~

~~———— **Subsection (b):** G.S. 15A-1243 provides that, in cases in which a defendant has elected to represent himself or herself, appointment of standby counsel shall be in accordance with rules adopted by the IDS Office. For non-capital criminal cases, the above rule restates the provisions on appointment of standby counsel in G.S. 15A-1243 and is intended to continue the current practice and procedure.~~

1.7 Withdrawal of Appointed Counsel

(a) ~~Scope of Obligation~~ Scope of Representation

~~Unless otherwise provided by law, counsel appointed in a case subject to this part is required to continue with the representation through judgment at the trial level, discussion with the client about his or her right to appeal, and entry of notice of appeal or expiration of the time for giving notice of appeal. Nothing in these rules shall be construed as permitting or requiring an attorney of record to deviate from applicable laws of this State, the Rules of Professional Conduct administered by the North Carolina State Bar, or other legal or ethical obligations of an attorney as an officer of the court.~~

(a) Scope of Representation

Unless otherwise provided by law, appointed counsel must continue representation through:

- Entry of judgment at the trial level,
- Advising the client of their right to appeal, and
- Filing a notice of appeal, if requested, or until the appeal deadline passes.

Nothing in this rule alters an attorney's ethical obligations under state law or the Rules of Professional Conduct.

(a1) Identification of Conflicts

~~Upon appointment to a case subject to this part, counsel shall make prompt and reasonable efforts to determine if the representation would cause any conflict of interest. If counsel identifies a nonwaivable conflict of interest, counsel shall file a timely motion to withdraw pursuant to subsection (b) of this rule. If counsel identifies a waivable conflict of interest, counsel shall either obtain the informed written consent of the client in accordance with the Rules of Professional Conduct or file a timely motion to withdraw pursuant to subsection (b) of this rule.~~

(a1) Conflicts of Interest

Upon appointment, counsel must promptly determine whether a conflict of interest exists:

- Ⓟ If a non-waivable conflict is identified, counsel must file a timely motion to withdraw under subsection (b).
- Ⓟ If a waivable conflict exists, counsel must either:
 - Ⓟ Obtain the client's informed written consent in compliance with the Rules of Professional Conduct, or
 - Ⓟ File a motion to withdraw.

(b) Withdrawal

~~At any time during or pending the trial or retrial of a case subject to this part, a judge of a court of competent jurisdiction may, upon application of the attorney appointed to the case and for good cause shown, permit the attorney to withdraw from the case. If the judge allows the attorney to withdraw, appointment of new counsel shall be in accordance with Rule 1.5 of these rules.~~

(b) Withdrawal from Representation

At any stage of a trial or retrial, a judge may allow an attorney to withdraw if:

- The attorney files a motion to withdraw, and
- The judge finds good cause for the withdrawal.

If the judge grants the motion, new counsel must be appointed according to Rule 1.5.

~~(e) Contract Counsel~~

~~Withdrawal from a case by an attorney performing work under contract with the IDS~~

~~Office shall be in accordance with the terms of the contract. If the contract does not specify a method of withdrawal, an attorney may withdraw in accordance with subsections (a) and (b) of this rule.~~

(c) Contract Counsel

Attorneys working under contract with IDS must follow the terms of their contract when withdrawing from a case. Termination of a contract shall not be the sole grounds for withdraw. [WF: Nothing in the contract supersedes/ controls relationship.]

If the contract does not specify a process, the withdrawal must follow subsections (a) and (b) above.

~~[New subsection (a1) adopted effective September 24, 2010]~~

Authority: G.S. 7A-498.2(b); 7A-498.3(a), (c); 7A-498.5(c), (d); 15A-143; 15A-144

Commentary

~~**Subsection (a):** G.S. 15A-143 states that an attorney making a general appearance in a criminal case is obligated to represent the defendant “until entry of final judgment.” Subsection (a) is intended to emphasize the attorney’s further responsibility to advise the client concerning appeal and to enter notice of appeal if requested. This rule applies that requirement to all cases subject to this part unless otherwise provided by law.~~

~~———— **Subsection (a1):** This subsection was added effective September 24, 2010. If appointed counsel moves to withdraw due to a conflict, in determining the appropriate amount of time to approve for compensation purposes pursuant to Rule 1.9(a)(1b), below, the trial judge shall consider the timeliness of counsel’s efforts to identify the conflict and to file the motion to withdraw.~~

~~———— **Subsection (b):** This subsection restates the provisions in former Rule D.0405 of the State Bar Rules on withdrawal from a case at the trial level. If a person other than appointed counsel (such as the client, prosecutor, or IDS Director) requests that a judge of a court of competent jurisdiction remove counsel for good cause, the judge shall follow established law. *See, e.g., State v. Poole*, 305 N.C. 308, 289 S.E.2d 335 (1982); *State v. Hutchins*, 303 N.C. 321, 279 S.E.2d 788 (1981); *see also State v. Robinson*, 330 N.C. 1, 409 S.E.2d 288 (1991).~~

~~———— **Subsection (c):** This subsection is new. Although contracts entered into by the IDS Office may require that attorneys obtain a judge’s approval to withdraw from a case, they potentially may provide for a different method of reassigning cases.~~

~~*-For Commentary to Rule 1.7 see “Section 1.9 – Withdrawal of Appointed Counsel” of Practitioners Guide.*~~

1.8 Contracts

~~The IDS Office is authorized to enter into contracts for legal representation and related services in cases in which the IDS Office is responsible for the provision and oversight of legal representation of a person. Contracts may provide for, among other things, appointment of particular counsel to handle certain cases and compensation at a specified rate. Any contracts for legal representation or related services in cases under the oversight of the IDS Office must be approved by the IDS Director.~~

~~*Authority:* G.S. 7A-498.2(b); 7A-498.3(a), (c), (d); 7A-498.5(c), (d), (f)~~

~~*Commentary*~~

~~————— This rule reflects the authority granted the IDS Office to contract for services in cases in which the IDS Office is responsible for the provision of legal services, and to control the expenditure of funds for quality legal representation and related services in such cases.~~

The IDS Office may enter into contracts for legal representation and related services in any case for which it is responsible.

Contracts may include:

- The assignment of specific attorneys to certain case types or court sessions;
- and
- Compensation at a fixed or negotiated rate.

All contracts must be approved by the IDS Director.

Authority: G.S. 7A-498.2(b); 7A-498.3(a), (c), (d); 7A-498.5(c), (d), (f)

1.9 Payment of Appointed Counsel

~~(a) Compensation at Trial~~

~~(1a) 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 shall be prorated among each of the cases involved. For all cases finally disposed at the trial level on or after July 1, 2005, 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. For all cases finally disposed at the trial level before July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the trial judge by January 1, 2006. In accordance with policies and procedures approved by the IDS Commission, an attorney may apply to the IDS Director for one advance extension of the applicable deadline or for a waiver of the applicable deadline.~~

~~(1b) Upon completion of the representation of a person by appointed counsel in the trial court in a non-capital criminal or non-criminal case, the trial judge shall, upon application, enter an order fixing the fee to which the attorney is entitled. In doing so, the judge shall review the amount of time claimed by the attorney, and shall approve an appropriate amount of time based on the factors normally considered in fixing attorneys' fees, such as the nature of the case, and the effort and responsibility involved. (2) Absent extraordinary circumstances and advance written approval of the IDS~~

~~Director, once the judge approves an appropriate amount of time pursuant to subsection (1b), above, the hourly rate for attorney compensation in such cases in both district and superior court, for both in-court and out-of-court time, shall be an amount approved by the IDS Commission and specified in the applicable IDS policy. In the event of changes in the availability of funding, the IDS Commission shall determine the effective date of any adjustment to the hourly rates for attorney compensation in cases in district and superior court.~~

~~(3) Even if the trial, hearing, or other proceeding is never held, preparation therefore is nevertheless compensable and, in extraordinary cases pending in superior court, the presiding judge may allow a fee for services rendered and payment for expenses incurred pending final determination of the case. In such cases, the time approved and hourly rate paid shall be set pursuant to subsections (1b) and (2), above.~~

~~(4) Fees shall be fixed by the district court judge who hears the case for actions or proceedings finally determined in the district court, and by the superior court judge who hears the case for actions or proceedings originating in superior court. In cases that are heard on appeal from district to superior court, fees may be fixed by the presiding district or superior court judge, provided that the defendant is given notice and an opportunity to be heard.~~

~~This section does not preclude districts from compensating attorneys in the above cases based on methods other than hours per case, such as per case fee schedules or per session rates, provided that the alternative compensation method or rate is approved by the IDS Director. Any district using or proposing an alternative compensation method shall notify the IDS Director, and the IDS Director may approve the method used or proposed provided it is consistent with the purposes of the IDS Act.~~

(a) Compensation at the Trial Level

1. Time Must Be Prorated for Multiple Cases

If an attorney works on multiple cases at the same time or waits in court for more than one case, that time must be divided proportionally across all affected cases.

2. Fee Orders Required

When representation ends in a non-capital criminal or non-criminal case, the presiding trial judge must enter an order setting the attorney's fee.

The judge will review the time claimed and approve an appropriate amount based on:

- The nature and complexity of the case;
- The effort required; and
- The attorney's responsibilities.

3. Hourly Rates Set by Policy

Unless the IDS Director has given prior written approval due to extraordinary circumstances, all time must be paid at the hourly rate set by the IDS Commission and published in the current IDS policy.

The IDS Commission determines the effective date of any rate changes based on available funding.

4. Preparation Time Is Compensable

Attorneys may be compensated for preparation time even if a hearing or trial is later cancelled. In extraordinary superior court cases, a judge may approve interim fees before final disposition.

5. Which Judge Sets the Fee

- For cases resolved in district court, the district court judge sets the fee.
- For cases resolved in superior court, the superior court judge does so.
- For cases appealed from district to superior court, either judge may set the fee, depending on local practice.

Defendants must be given notice and a chance to be heard before the fee is entered.

6. Alternative Fee Structures

Districts may use other approved compensation models, such as:

- Flat per-case rates; or
- Per-session rates.

Any such method must be approved by the IDS Director and consistent with IDS policies.

7. Deadlines for Submitting Fee Applications

In non-capital cases, attorneys must submit fee applications to the court and IDS no later than 90 days after final disposition at the trial level.

8. Format and Filing Requirements

Fee applications must comply in form and substance with current IDS Attorney Fee and Expense Policies. INSERT LINK

- Fee applications must comply with IDS Attorney Fee and Expense Policies.
- Attorneys are not required to submit timesheets with their fee applications unless they have been requested to do so by a judge or by IDS. However, attorneys must maintain billing and timekeeping records that support their fee applications for five years after submission, and such records must be made available to IDS upon request.
- Attorneys must maintain supporting billing records for five years and make them available upon request.
- Fee applications must be electronically filed with IDS using the OASIS system and simultaneously submitted to the court per AOC procedures.

9. The IDS Director sets the rates for expenses related to legal representation in non-capital criminal and non-criminal cases. While the Director reserves the right to review and adjust any court-approved expense award to ensure conformity with IDS policies and rates established under the IDS Act, this authority does not impose an obligation to review or correct every award.

(5)

(b) Orders for Payment Fee Orders

~~Orders for the payment of compensation to appointed counsel for representation shall be entered by the judge on a form approved by the IDS Director. A copy of the order for the payment of fees shall be forwarded by the clerk of superior court to IDS Financial Services Division, Courier Box 56-10-50, Raleigh, N.C. If no courier is available, a copy of the order shall be mailed to P.O. Box 2448, Raleigh, N.C. 27602.~~

Judges must enter payment orders on a form approved by the IDS Director.

The clerk will electronically file the order using the system and procedures designated by the Administrative Office of the Courts.

(c) Fee Schedules

~~The IDS Director may authorize or require the use of fee schedules for the compensation of attorneys and the payment for services related to legal representation in non-capital criminal and non-criminal cases.~~

Pursuant to its statutory authority under G.S. 7A-498.5(f), the IDS Commission sets the fee schedules for the compensation of attorneys in non-capital criminal and non-criminal cases. The applicable fee schedules are available at: <https://www.ncids.org/assigned-counsel/rates-fee-applications/>.

(d) ~~Compensation of Contract Counsel~~

~~Compensation of attorneys performing work under contract with the IDS Office shall be paid in accordance with the terms of the contract.~~

Attorneys who work under contract with IDS will be paid according to the terms of their contract.

(e) Outside Compensation Is Prohibited

~~Once counsel has been appointed to represent a person in a case subject to this part, counsel shall not accept any fees for the representation other than that awarded by the court or the IDS Director. If a third party contributes funds to non-counsel services, counsel shall place the funds in trust and account to the third party and the IDS Director about the use of the funds.~~

Once counsel is appointed, the attorney may not accept payment from the client or any other source for services covered by the appointment—except as allowed under IDS policy.

If a third party provides funds for non-attorney services (e.g., an expert), the attorney must:

- Place the funds in a trust account; and
- Provide an accounting to both the contributor and the IDS Director.

Authority: G.S. 7A-458; 7A-498.5(f)

For Commentary to Rule 1.9 see “Section 1.9 – Payment of Appointed Counsel” of Practitioners Guide.

~~[Subsection (a) amended effective February 15, 2002, May 6, 2005, August 13, 2007, February 1, 2008, February 27, 2009, June 5, 2009, June 1, 2011, and May 29, 2015]~~

~~[Subsection (b) amended effective May 6, 2005]~~

~~[Subsection (c) amended effective September 15, 2006]~~

~~[Commentary to subsection (e) amended effective March 7, 2014]~~

~~*Authority:* G.S. 7A-458; 7A-498.5(f)~~

~~*Commentary*~~

~~This rule effectively continues the current practice on compensating appointed counsel in non-capital criminal and non-criminal cases. It incorporates substantial portions of former Rule D.0406 of the State Bar Rules and of G.S. 7A-458 before it was revised by the IDS Act. Representation is complete within the meaning of this rule when counsel has fulfilled the obligations set forth in Rule 1.7(a), above. Courts using fee schedules in effect before the effective date of the IDS Act should notify the IDS Office of any such schedules. Because of the sheer number of non-capital criminal and non-criminal cases handled by appointed attorneys, the IDS Office is not presently in a position to assume responsibility for determining compensation throughout the state.~~

~~**Subsection (a):** Effective April 1, 2002, subsection (a) established a standard hourly rate of \$65 in all non-capital and non-criminal cases at the trial level. The subsection was amended effective February 1, 2008 to increase that rate to \$75 per hour for all fee applications signed by judges on or after February 1, 2008. Due to significant funding reductions by the 2011 General Assembly and the Commission's decision to implement a reduced and variable rate structure for different types of cases, the subsection was amended effective June 1, 2011 to provide that the hourly rates for non-capital and non-criminal cases shall be as approved by the Commission and specified in the applicable IDS policy. The subsection was also amended effective May 6, 2005 to clarify that attorneys can not double bill the state for time spent waiting in court or working on multiple cases simultaneously. For all cases finally disposed at the trial level on or after July 1, 2005, the subsection was amended to require attorneys to submit fee applications to the presiding judge within one year of the date of final disposition. Effective August 13, 2007, the subsection was amended to allow attorneys to apply for an advance extension or waiver of the deadline in accordance with policies and procedures approved by the IDS Commission. Attorney fee applications submitted more than one year after the date of final disposition without an approved extension or waiver will not be paid from state funds. Subsection (a)(4) was amended effective February 27, 2009 to clarify that, in cases that are appealed de novo to superior court, fees may be set by the presiding district or superior court judge, depending on local practice. Subsection (a)(2) was amended effective June 5, 2009 to remove a provision that set a minimum fee equivalent to one hour of work for cases in which an attorney claims and the court approves less than one hour.~~

~~**Subsection (b):** In entering orders for payment, courts should continue to use a revised version of the fee application form that has been used by the AOC (AOC-CR-225). Effective May 6, 2005, the clerk is no longer required to certify every individual fee application. However, fee applications must be sent to IDS Financial Services in a secure packet directly from the clerk's office.~~

~~**Subsection (e):** Subsection (e) was amended effective September 15, 2006 to clarify that, to avoid any potential for overreaching or the appearance of impropriety, an appointed attorney cannot subsequently accept fees as retained counsel from the client or the client's family. If family or friends of an indigent client want to contribute to non-counsel services, such as expert or support services, nothing in this subsection precludes them from doing so. However, the appointed attorney must place any such funds in his or her trust account and provide an accounting to the contributing family member and the IDS Director. ——— This commentary was amended effective March 7, 2014 to clarify a new exception to the general prohibition against accepting a retainer in a case after an attorney has been appointed. Effective for offenses committed on or after December 1, 2013, the General Assembly amended G.S. 15A-1340.23 to provide that, unless otherwise noted, the maximum punishment for a person who is convicted of a Class 3 misdemeanor and who has no more than three prior convictions shall be a \$200 fine. Thus, unless otherwise noted, an indigent defendant who is charged with committing a Class 3 misdemeanor on or after that date and who has no more than three prior convictions is not entitled to appointed counsel pursuant to G.S. 7A451(a)(1). However, if a defendant who is not entitled to counsel for a Class 3 misdemeanor pursuant to G.S. 7A-451(a)(1) is in custody at the time the court determines entitlement to counsel and the court does not modify the pretrial detainee's conditions of release to allow him or her to be released pending trial without posting a secured bond, the court may appoint counsel to represent the pretrial detainee during the period of pretrial confinement on the Class 3 misdemeanor charge to ensure that he or she has meaningful access to the courts. This type of appointment constitutes a limited appearance pursuant to G.S. 15A-141(3) and G.S. 15A-143 and the appointment ends at the time of the defendant's release from custody. In such a case, there is less risk of overreaching or the appearance of impropriety than with other indigent appointments, and the attorney may be retained by the client after the client's release from custody to continue the representation in the case.~~

~~If, during the course of representation as appointed counsel, an attorney learns that a client who was previously determined to be indigent has become financially able to pay for the representation, G.S. 7A450(d) directs the attorney to inform the court. *But cf.* RPC 52 (Jan. 13, 1989) (directing counsel to "call upon his client to reveal that circumstance to the tribunal" and, if the client refuses to permit disclosure, to move to withdraw). If the court finds that the client is no longer indigent, the appointed attorney may move to withdraw or continue the representation *pro bono*.~~

1.10 Supporting Services

~~In non-capital criminal and non-criminal cases, the court may approve fees for the service of expert witnesses, investigators, and others providing services related to legal representation in accordance with all applicable IDS rules and policies.~~

~~[Section amended December 9, 2011]~~

In non-capital criminal and non-criminal cases, the court may approve payment for services that support legal representation, including expert witnesses, investigators, or other necessary service providers.

All requests and payments must follow current IDS rules and policies.

Authority: G.S. 7A-454; 7A-498.3(c); 7A-498.5(c)(6)

1.10A Authority to Implement other Programs, Plans, and Contracts

~~Nothing in these rules shall prohibit appointment or compensation of otherwise qualified experts pursuant to programs, plans, or contracts that may be implemented from time to time to improve quality, efficiency, and economy where such programs, plans, or contracts are approved by the IDS Director.~~

~~{Section added October 29, 2021}~~

~~Authority: G.S. 7A-454; 7A-498.3(c); 7A-498.5(c)(6)~~

Commentary

~~—————The above statutes, as revised, provide that appointment and compensation of experts, investigators, and others providing services related to legal representation shall be in accordance with IDS rules. For noncapital criminal and non-criminal cases, this rule is intended to restate in general terms the current statutory and case law on such services. This section was amended December 9, 2011 to clarify that court orders approving fees for experts and investigators shall comply with all applicable IDS rules and policies, including the standardized expert rates set by the IDS Commission pursuant to G.S. 7A-498.5(f). For capital cases, see Part 2, Rules 2D.1 through 2D.5.~~

~~The IDS Director may approve programs, plans, or contracts for expert, investigative, or other support services in non-capital cases, as long as they promote quality, efficiency, or cost savings.~~

~~These alternative methods of delivering services must comply with IDS policies and be approved by the IDS Director.~~

~~Authority: G.S. 7A-454; 7A-498.3(c); 7A-498.5(c)(6)~~

1.11 Recoupment of Fees

~~(a) Generally~~

~~To the extent required by law, individuals who have been appointed counsel under this part shall continue to be responsible for repaying the fees paid to such counsel or, in the case of representation by a public defender office or contract counsel, the value of services rendered by counsel. The judge setting the fee to be paid or the value of services rendered shall determine the amount to be recouped if recoupment is required by law. The court shall ensure that the person potentially responsible for paying the fees is notified of the potential liability, and that the person has a reasonable opportunity to be heard on the issue.~~

(a) General Rule

If required by law, individuals who are appointed counsel must repay the cost of that representation. This includes:

- Fees paid to private assigned counsel, or
- The value of services provided by a public defender or contract attorney.

The judge who sets the fee or determines the value of services is also responsible for setting the amount to be repaid.

The court must ensure the person:

- Is notified of potential repayment, and
- Has a reasonable opportunity to be heard on the issue.

~~(b) Value of Public Defender or Contract Services~~

~~For legal representation rendered by attorneys working in a public defender office or under contract with the IDS Office, the value of services pursuant to G.S. 7A-455(b) shall be determined in the same manner in which appointed counsel's compensation is determined pursuant to Rules 1.9(a)(1b) and 1.9(a)(2), above, if recoupment is required by law.~~

(b) Public Defender and Contract Counsel Valuation

When recoupment is required for services provided by a public defender or contract attorney, the court must determine the value of those services using the same method and hourly rates applied to private assigned counsel under Rule 1.9.

(c) Civil Proceedings and Non-Criminal Contexts

Individuals may be required by law to repay the cost of appointed counsel in non-criminal (civil) cases, such as child welfare and juvenile delinquency proceedings. If recoupment is ordered in any such case, the procedures in this rule must be followed. Specifically, the court must ensure that:

- The person is notified of potential liability,
- The person is given an opportunity to be heard, and

- The court assesses repayment fairly, including determining the value of services rendered by appointed counsel, public defenders, or contract counsel.
- While the specific statutory procedures may vary (see G.S. 7A-450.1 through -450.4 for civil matters and G.S. 7A-455 for criminal matters), the underlying due process protections remain consistent across case types.

~~[Subsections (a) and (b) and commentary amended effective September 19, 2014]~~

Authority: G.S. 7A-450.1 through -450.4; 7A-455; 7A-498.5(c)(8)

Commentary

~~———— **Subsection (a):** For the most part, this rule is intended to continue current practice in non-capital criminal and non-criminal cases with respect to recoupment of the cost of appointed counsel. In criminal cases, recoupment is governed by G.S. 7A-455. The IDS Act made only one change to that statute. It required that the value of services reflected in a judgment against a defendant be set in accordance with rules adopted by the IDS Office. The Public Defender remains obligated to inform the judge of the value of legal services rendered to the defendant. The form judgment is a revised version of the same fee application form that has been used by the AOC (AOC-CR-225).~~

~~———— In some non-criminal cases, recoupment of fees is also required, although the procedure for recoupment differs somewhat from the procedure in criminal cases. See G.S. 7A-450.1 through -450.4. The IDS Act did not alter those procedures.~~

Amended Effective October 29, 2021

~~—This rule also provides that a person potentially liable for fees should be given reasonable notice and an opportunity to be heard. In most cases covered by this part, the person will be present at the time judgment is entered, and the court can give the person an opportunity to be heard on the amount proposed to be entered.~~

~~—**Subsection (b):** G.S. 7A-455(b) provides that “[t]he value of services [rendered by assigned counsel, the public defender, or the appellate defender] shall be determined in accordance with rules adopted by the Office of Indigent Defense Services,” and G.S. 7A-498.5(c)(8) directs the IDS Commission to develop standards for “assessing and collecting the costs of legal representation.” Pursuant to that authority, subsection (b) was revised effective September 19, 2014 to clarify that, when a court determines the value of services provided by a public defender or contract attorney, the court should apply the same hourly rates that the IDS Commission sets for private assigned counsel services.~~



North Carolina Office of Indigent Defense Services

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Table of Updates:

IDS Policies Governing Attorney Fee and Expense Applications in Non-Capital Criminal and Non-Criminal Cases at the Trial Level

Chapter and Section	Updated or New Content	Effective Date
Chapter I: Attorney Fee and Expense Applications Section A: The Application Forms & Submission Processes:	<ol style="list-style-type: none"> 1. Revised Non-Capital Criminal Cases to provide additional instructions, with links, for billing using OASIS for PAC. 2. Added language acknowledging that MAC do not use fee applications for payment, but do use them for recoupment purposes, per their contracts. 3. Revised Juvenile Delinquency and Non-Criminal Cases to reflect submission of these fee applications in eCourts using File and Serve (in advance of full eCourts rollout by AOC in October 2025). 	
Chapter I: Attorney Fee and Expense Applications Section B: Fee Application Deadlines	<ol style="list-style-type: none"> 1. Fee application deadline changed from requiring fee applications be submitted to the court within one year (365 days) of final disposition, to 90 days of final disposition, for all cases appointed on or after January 01, 2026. 2. Link added to fee deadline waiver policy and form. 3. Force majeure language added to clarify that fee deadline waivers will only be granted in limited and serious circumstances that are beyond the control of the attorney (medical, health, safety, and force majeure). 	
Chapter I: Attorney Fee and Expense Applications	<ol style="list-style-type: none"> 1. Added clarifying language that name of applicant is always the attorney who provided the representation, payee may be the attorney or a law firm. 	

<p>Section C: General Billing Principles</p>	<ol style="list-style-type: none"> 2. Added language that a current Sub W-9 must be on file with IDS Fiscal and the Office of State Controller, with a link to the form and instructions. 3. Added requirement that payments be issued by direct deposit/electronic payment and not by check with a link to the direct deposit/ePay form. 4. Updated language to simplify the 6-minute increment billing requirement, including a tenth of a minute chart with examples of converting minutes to decimals rounding up to nearest tenth of an hour. 5. Added an example of pro-rating time in court waiting among multiple clients using the 6-minute increment chart. 6. Added requirement that attorney must maintain an itemized billing record providing sufficient detail regarding counsel’s service that the claim for compensation is reasonable (date of work, brief description, time spent per item), must be maintained by attorney for 5 years for audit purposes, regardless of whether the court or the IDS Director requires the itemized billing record to be attached to the fee application. 7. Added sample itemized billing record. 8. Added language that in addition to a judge requiring that an attorney include an itemized billing record to a fee application, local rule or the IDS Director may also require this. 	
<p>Chapter I: Attorney Fee and Expense Applications</p> <p>Section D: The Identity of the Attorney Applicant</p>	<ol style="list-style-type: none"> 1. Added language providing instruction on submitting fee applications for several clients handles on a per session or per day basis in eCourts File and Serve, as provided by AOC, including specific instruction for sessions when no clients appear for the session. 	
<p>Chapter I: Attorney Fee and Expense Applications</p> <p>Section E. Fee Applications Involving One Client with Multiple Cases</p>	<ol style="list-style-type: none"> 1. Added language to the “highest original charge” section of the consolidation rule to specify that while additional file numbers are listed on the “Additional File No.” section of the fee application, the corresponding OASIS invoice provides only a single file number. The file number associated with the highest charge is to be entered into OASIS (and also must be the file number used as the “lead” file number on the fee app, and the file number of the case the fee app is filed into in eCourts File and Serve. 	

<p>Chapter I: Attorney Fee and Expense Applications</p> <p>Section G. Grounds for Return: Non-Capital Criminal Case Fee Applications (AOC-CR-225):</p>	<ol style="list-style-type: none"> 1. Added addendum to the requirement that the “name and signature of judge setting the fee” to specify that using OASIS authorizes payment for a properly filed and served fee app with a corresponding, matching, OASIS invoice to be paid prior to the judge’s signature. However, if a judge reduces or refuses to authorize a fee application the judge will notify IDS and the attorney must refund any overpayment. 	
<p>Chapter I: Attorney Fee and Expense Applications</p> <p>Section I. Grounds for Return: Civil Case Fee Applications (AOC-G-200):</p>	<ol style="list-style-type: none"> 1. Added link to the “Entitlement to and Payment of GAL” chart to guide and assist GALs who may be appointed to provide services that IDS does not have the statutory authorization to pay. 	
<p>Chapter II: Standard Hourly Attorney Fees</p> <p>Section A. Standard Hourly Rates</p>	<ol style="list-style-type: none"> 1. Updated the language regarding judges reviewing the hours claimed on each fee app and approving or reducing those hours to include that judges are asked to notify the IDS Fiscal officer of any rejection or hour reduction to any fee application so that any overpayment made using OASIS can be reimbursed to the state. 	
<p>Chapter III: Reimbursable Expenses</p> <p>Section A. In-State Travel</p> <p>Mileage Reimbursement Policy</p>	<ol style="list-style-type: none"> 1. Addition of Mileage FAQ 2. Mileage policy changed such that mileage is only reimbursable under the following limited circumstances: <ol style="list-style-type: none"> 1. PAC Out-of-District Recruitment: When IDS has specifically recruited an attorney to take a case in a county where the attorney is not on the appointed counsel roster. 2. MAC Program Contracts: When mileage reimbursement has been explicitly included in a Managed Assigned Counsel (MAC) program agreement. 3. Case-Related Travel Outside the County of Appointment: Travel for case purposes—e.g., visiting a client in Central Prison or interviewing a witness in another county—is reimbursable at the IDS-approved rate and does not require separate pre-approval. <p>Mileage is not reimbursable:</p>	

	<ol style="list-style-type: none"> 1. For travel within the county where the attorney's office is located. 2. For travel to, from, or within a county where the attorney is on the appointed counsel roster, regardless of whether that county is the same as where the office is located. 	
<p>Chapter III: Reimbursable Expenses</p> <p>Section A. In-State Travel</p> <p>Lodging</p>	<ol style="list-style-type: none"> 1. Language added to clarify that the state rates applicable to hotels also apply to third party rentals (such as AirBnB). 2. Only actual taxes incurred, which must be specifically itemized and documented on the receipt, can be reimbursed in excess of the IDS authorized rate. Any other itemized services, such as cleaning fees are only reimbursable up to the IDS authorized rate, not in excess of it, when amortized across nights. 3. If booking for purposes of hosting multiple defense team members (e.g., for a trial), seek pre-approval from the presiding judge. 4. Third party lodging agreements are not allowed among family members or where such agreements or payments create a financial conflict of interest. 	
<p>Chapter III: Reimbursable Expenses</p> <p>Section B. Out-of-State Travel</p>	<ol style="list-style-type: none"> 1. Obtaining prior written approval for out-of-state travel was changed from "urged" to "required", the documentation may be an informal judge email, and the documentation must be attached to the fee app. 	
<p>Chapter III: Reimbursable Expenses</p> <p>Section C. Photocopying</p>	<ol style="list-style-type: none"> 1. Photocopying policy updated to address that photocopies should be minimal now that the court system is paperless. 2. Update to out-of-house copy reimbursement, such that the actual cost of out-of-house copies (those made at a commercial copy center) are reimbursable with a receipt, the receipt must be attached to the fee application. Reimbursement is no longer capped at the .10 single sided and .16 double sided reimbursement rate that applies to in-house copies. 3. Out-of-house copies must be billed in OASIS as "other expense" and the receipt attached to the fee application. They must not be billed in OASIS in the "copy" reimbursement boxes, which are for in-house copies only, and apply the .10 and .16 reimbursement rate. 	

<p>Chapter III: Reimbursable Expenses</p> <p>Section E. Digital Storage CDs/DVDs/USB Flash Drives</p>	<ol style="list-style-type: none"> 1. Digital storage updated to provide for reimbursement of USB Flash Drives up to \$30 each; and 2. External Hard Drives up to \$75.00 each 3. This is predicated on the digital storage devices being used exclusively for a single appointed case and that receipts must be attached to the fee application. 	
<p>Chapter III: Reimbursable Expenses</p> <p>Section F. Online Video Conferencing with Clients in Jail</p>	<ol style="list-style-type: none"> 1. Updated to include a link to the direct billing options available through JurisLink and iWebVisit. 	
<p>Chapter III: Reimbursable Expenses</p> <p>Section H. Providing Closed Client Files</p>	<ol style="list-style-type: none"> 1. Updated to remove language related to any ethical or professional obligations to provide closed client files, directing the attorney to contact the NC State Bar for guidance on these obligations and the Rules of Professional Conduct. 2. Removed all language unrelated to what IDS will and will not reimburse related to providing closed client files, the substance of which is unchanged. 	
<p>Chapter III: Reimbursable Expenses</p> <p>Section I. Other Expenses</p>	<ol style="list-style-type: none"> 1. Additional clarifying language that all “other expenses” must be specifically related to representation of an individual appointed client. 2. Addition that while receipts that do not cumulatively total \$25.00 do not have to be attached to the fee app, they must be maintained by the attorney for 5 years and must be made available to IDS, upon request, for audit purposes. 3. Addition of language providing guidance on purchasing client clothing as a reimbursable expense. Directs attorney to check with local Public Defender’s offices for available clothing to borrow, and to contact IDS CFO if clothing must be purchased. 4. Added language prohibiting subcontracting: <p style="margin-left: 40px;">“No person may be paid for any services rendered other than the appointed attorney (or law firm), an in-house paralegal (see Section G), or an expert or investigator approved by the court (see Section V). No payment will be issued to a subcontractor, assistant, or other person whose services are listed as an expense.”</p> 	

MEMORANDUM

To: Indigent Defense Attorneys, Public Defenders, Assigned Counsel
 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 23, 2025

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.

Note: These policies implement and supplement the rules adopted by the IDS Commission governing appointment and compensation of counsel in non-capital criminal and non-criminal cases. For the full text of those rules, see *Part 1: Rules for the Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level* [[insert link](#)].

Effective Date: These policies apply to fee and expense applications submitted in non-capital criminal and non-criminal cases filed on or after January 1, 2026. For cases filed before that date, prior policies remain in effect.

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I. Attorney Fee and Expense Applications

A. The Application Forms & Submission Processes:

Non-Capital Criminal Cases

To seek compensation in any non-capital criminal case at the trial level the appointed attorney must complete the most current version of the AOC-CR-225 Non-Capital Criminal Case Trial Level Fee Application¹, available at <https://www.ncids.org/ids-forms/>.

The completed fee application form must be submitted to the court via eCourts File & Serve <https://efilenc.tylertech.cloud/OfsEfsp/ui/landing>, served on OASIS@nccourts.org, and immediately following submission of the fee app a corresponding invoice for the case must be submitted via OASIS at <https://idsbilling.org/>.

For more information see <https://www.ncids.org/oasis/>.

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.

Note: Managed Assigned Counsel (“MAC”) do not use fee applications for payment and instead bill for services using the MAC payment system, providing recoupment documentation to the court according to their IDS contracts and policies.

Juvenile Delinquency Cases

To seek compensation in any juvenile delinquency case or undisciplined contempt at the trial level the appointed attorney must complete and submit the most current version of the AOC-J-411 Juvenile Delinquency Trial Level Fee Application, available at <https://www.ncids.org/ids-forms/>.

The completed fee application form must be submitted to the court via eCourts File & Serve <https://efilenc.tylertech.cloud/OfsEfsp/ui/landing>.

Note: Managed Assigned Counsel (“MAC”) do not use fee applications for payment and instead bill for services using the MAC payment system, providing recoupment documentation to the court according to their IDS contracts and policies.

Non-Criminal Cases

To seek compensation in any non-criminal case at the trial level, such as abuse/neglect/dependency, termination of parental rights, competency, commitment, and child support contempt, the appointed attorney or guardian ad litem must complete and submit the most current version of the AOC-G-200 (Civil Case Trial Level Fee Application), available at <https://www.ncids.org/ids-forms/>. The completed fee application form must be submitted to the court via eCourts File & Serve <https://efilenc.tylertech.cloud/OfsEfsp/ui/landing>.

Note: Managed Assigned Counsel (“MAC”) do not use fee applications for payment and instead bill for services using the MAC payment system, providing recoupment documentation to the court according to their IDS contracts and policies.

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 and invoices **for any cases appointed on or after January 01, 2026**, must be signed by the appointed attorney and submitted **no more than ninety (90) days 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 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* <https://www.ncids.org/ids-policies-and-rules/>.
 - Fee deadline waivers are authorized only when there are serious medical, health, safety, or force majeure reasons beyond the control of the attorney that prevent their ability to timely seek payment.

C. General Billing Principles:

- In assigned cases, the “Name of Applicant” on the fee application is always the individual attorney who provided the client representation. If payment is to be made to that individual

attorney, the “Payee” should be listed as “same”. If payment is to be made to the applicant’s law firm, the “Payee” should state the name of the law firm.

- Per U.S. tax law and State policy, the Payee must have a State of North Carolina Substitute W-9 Form on file with IDS Fiscal Services and the Office of State Controller. See <https://www.ncids.org/sub-w-9-form/>.
 - Attorney payments will be issued by IDS via direct deposit/electronic payment (ePay). See <https://www.ncids.org/direct-deposit-epay-form/>.
 - Attorney time must be tracked and reported on fee apps in hours and tenths of an hour (6-minute increments) using decimals. For 1-6 minutes worked bill for “.1” hour, for 7-12 minutes worked bill for “.2” hours, etc., actual time worked is rounded up to the nearest tenth of a decimal. If an attorney works 1 hour and 46 minutes, for example, that is billable as “1.8” hours.
- ✓ See the “Tenths of an Hour Decimal Conversion” chart below:

Minutes	Decimal (6-min)
1-6	.1
7-12	.2
13-18	.3
19-24	.4
25-30	.5
31-36	.6
37-42	.7
43-48	.8
49-54	.9
55-60	1

- 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 in court waiting 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).
 - ✓ **For Example:** Appointed attorney is in court waiting for 3 appointed cases to be called and waits 1 hour total.
 - The attorney **would not** claim 1-hour of “time in court waiting” for each case (the attorney did not wait 3 hours).
 - The attorney **would** claim .4 hours of “time in court waiting” for each case.
 - The 1 hour of “time in court waiting” is shared by the 3 clients, this is 20 minutes each, using the “Tenths of an Hour Decimal Conversion” chart above 20 minutes is equal to .4 hours.

- Attorney time spent preparing or submitting a fee application is not compensable.
- Attorney must maintain an itemized billing record for each appointed case that provides sufficient detail regarding counsel’s services to demonstrate that the claim for compensation is reasonable. The record must include the date of first substantive client interview, date of work, a brief description of work performed, and time spent per item. These records must be retained by the attorney and be available for review by IDS for 5 years for audit purposes, regardless of whether the court or IDS Director requires the itemized billing record to be attached to the fee application.

For Example:

Attorney Name: XXX

Case Number: 23CR123456

Date	Brief Description of Work	Time Spent Per Item
3/05/2025	Appointment and case review	.5 hours
3/07/2025	Initial Substantive Client Interview	1 hour
3/10/2025	Client phone call	.5 hours
3/12/2025	Review discovery	1.2 hours
3/20/2025	Court hearing	1.6 hours
Total		4.8 hours

- If required by the presiding judge, by local rule, or by request of the IDS Director, an applicant must attach the itemized billing record described above to the fee application.

D. The Identity of the Attorney Applicant:

- The fee application forms require the attorney applicant to identify themselves 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*:

- ✓ The attorney is a private attorney, and the attorney is submitting one fee application for one client pursuant to an individual appointment to represent that person; or
- ✓ The attorney is a private attorney and is 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. To file a fee application for a per session or per day basis, the attorney should:
 - Enter one file number of one case from the session hearing in the file number box and attach the court docket to the fee application submitting via eCourts File and Serve.
 - If there is a session with no clients, create and enter an “R file” number for the session hearing (see the clerk for instructions on creating an “R file” number) and attach the court docket to the fee application submitting via eCourts File and Serve.
- Check the “**public defender**” box *if*: The attorney is a salaried state employee who works in one of the district public defender offices, and the attorney are submitting the fee application solely for recoupment purposes (see Section IV. below).
- Check the “**IDS contract counsel**” box *if*: The attorney is a private attorney who handled the case pursuant to a contract with the IDS Office.

E. Fee Applications Involving One Client with Multiple Cases:

- **General Rule:** If an attorney represents one client in multiple cases, and all 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 the attorney is submitting one fee application for one client where there are multiple file numbers, the attorney should report the file number associated with the highest charge in the box labeled “File No.,” and should report any other file numbers in the box labeled “Additional File Nos.”
 - **OASIS Invoice:** For adult criminal cases at the trial level, the OASIS invoice only allows/requires a single File No., in OASIS when invoicing for a single fee app covering multiple cases enter only the file number associated with the highest charge, which is also the file number used to file the fee app in eCourts File and Serve.
- **Non-Capital Criminal Dispositions:**
 - ✓ In completing a fee application for one client with multiple cases, the attorney 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 the attorney 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, the attorney 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 the attorney 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.

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 or that the social security number could not be found despite reasonable efforts.
 - ✓ 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 the attorney is 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 the attorney is 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 payee information
 - ✓ 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.
 - When using OASIS, the fee application served on IDS with a corresponding invoice may be paid prior to the judge signing the fee application. However, if the judge reduces the fee award before signing or refuses to sign the fee application the judge will notify the IDS CFO, and the attorney must refund any overpayment.

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 the attorney is 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 payee information
 - ✓ 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):

- IDS has the statutory authority to issue payment to an appointed guardian ad litem only in certain cases, see <https://www.ncids.org/resources/entitlement-to-and-payment-of-gals/>
- 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 the attorney is 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 the attorney is 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 payee information
 - ✓ 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.
 - Judges are asked to notify the IDS Fiscal Officer aaron.m.gallagher@nccourts.org of any rejection or reduction of any fee award on any fee application, so that any OASIS overpayment made can be reimbursed to the state.
- 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 only under the specific circumstances described and 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 to prevent having paid expenses that are not reimbursable.

A. In-State Travel

Mileage Reimbursement Policy

Mileage is reimbursable only under the following limited circumstances:

1. PAC Out-of-County Recruitment: When IDS or the Chief Public Defender has requested an attorney to take case(s) in a county where the attorney is *not* on the appointed counsel roster.
2. MAC Program Contracts: When mileage reimbursement has been explicitly included in a Managed Assigned Counsel (MAC) program agreement.
3. Case-Related Travel Outside the County of Appointment: Travel for case purposes—e.g., visiting a client in Central Prison or interviewing a witness in another county—is reimbursable at the IDS-approved rate and does not require separate pre-approval.

Mileage is not reimbursable:

- For travel within the county where the attorney's office is located.

Except as provided in paragraphs III.A.1. or 2 above, for travel to, from, or within a county where the attorney is on the appointed counsel roster, regardless of whether that county is the same as where the office is located.

All reimbursable mileage must be listed on the fee application or time sheet, with the number of miles and purpose of travel clearly documented. Reimbursement is limited to the IDS-approved mileage rate. When pre-approval is required, documentation must be attached, or the claim will be denied.

See: [Expense Rates PAC](#)

Mileage FAQ

Mileage Reimbursement FAQ

Q1: Can I be reimbursed for driving to court in my home county? A: No. Mileage is not reimbursable for travel within the county where your office is located.

Q2: I'm on the roster in County A. Can I be reimbursed for travel to a hearing there? A: No. Mileage is not reimbursable for travel to, from, or within a county where you are on the appointed counsel roster.

Q3: I drove to Central Prison to visit a client appointed in another county. Can I be reimbursed? A: Yes. Mileage for case-related travel outside the county of appointment (e.g., client meetings or witness interviews) is reimbursable at the IDS-approved rate.

Q4: Do I need pre-approval for mileage related to an out-of-county witness interview? A: No, not if the travel is clearly case-related and documented. But if your situation is unusual, you may want to seek clarification from IDS.

Q5: I was recruited by IDS to take a case in a different district. Is mileage reimbursable? A: Yes, if you're not on the roster for that district and IDS recruited you for the case.

Q6: What happens if I forget to attach pre-approval documentation when it's required? A: The mileage claim will be denied. Pre-approval is mandatory when required by policy.

Meals:

Meals are only reimbursable if there is an overnight stay and then in accordance with the current IDS authorized per diem, which is inclusive of gratuity, with one per diem per overnight stay. Receipts are not required. For current per diem rates see: <https://www.ncids.org/counsel-rates/> ("Expense Rates PAC").

Lodging:

The actual cost of overnight hotel lodging is reimbursable, not to exceed the current IDS authorized rate, plus actual taxes incurred. A valid hotel receipt is required, and credit card statements will not be accepted. For current lodging rates see: <https://www.ncids.org/counsel-rates/> ("Expense Rates PAC").

For lodging in an establishment that is being rented out by a third party, which may include, yet is not limited to, online website house or room rental services, such as AirBnB, the actual cost of over-night lodging is reimbursable, not to exceed the current IDS authorized rate, plus actual taxes incurred. The actual taxes incurred must be specifically documented on an itemized receipt). Any other itemized fees, such as cleaning fees, are only reimbursable to the extent that they do not exceed the current lodging rate when amortized across nights. If booking for purposes of hosting multiple defense team members (e.g., for a trial), seek pre-approval from the presiding judge.

Third party lodging agreements are not allowed among family members or where such agreements or payments create a financial conflict of interest.

B. Out-Of-State Travel: Attorneys must obtain prior written approval from a judge (or for MAC attorneys, an IDS Regional Defender) before incurring out-of-state travel expenses, this approval documentation may be an informal email and must be attached to the fee application.

- **Travel Costs:** Reasonable travel costs, including parking fees and tolls, are reimbursable with receipts. Fines for traffic and parking violations are the responsibility of the attorney and are not reimbursable by the state.
- **Meals:** Meals are only reimbursable if there is an overnight stay and then in accordance with the current IDS authorized per diem, which is inclusive of gratuity, with one per diem per overnight stay. Receipts are not required. For current per diem rates see: <https://www.ncids.org/counsel-rates/> ("Expense Rates PAC").
- **Lodging:** The actual cost of overnight lodging is reimbursable, not to exceed the current IDS 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 Rates PAC").
 - AirBnB and other similar services can be reimbursed when total costs are at or below the allowed lodging rates. Note that non-tax hidden fees (cleaning fees, etc.) must be included in the calculation for the maximum nightly lodging rate. If an AirBnB is to be booked for purposes of hosting multiple defense team members (e.g., for a trial), seek pre-approval from the presiding judge.

C. Photocopying:

- **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 and whether they were single or double-sided on the fee application.
 - ✓ When invoicing **in-house** copies in OASIS the invoice will calculate \$0.10 per page for single-sided copies and \$0.16 for double-sided copies.
- **Out-of-house copies** are reimbursable as an “other expense. IDS will reimburse an attorney for the actual cost of out-of-house copies with an itemized receipt from the vendor who created the copies. The receipt must be attached to the fee application and credit card statements will not be accepted. When invoicing for out-of-house copies in OASIS use the “other expenses” box. The receipts for the copies must be attached to the fee application.

D. Printing Digital Discovery:

- 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.
- IDS will not reimburse counsel for printing a copy of the entire discovery package for an investigator.

E. Digital Storage CDs/DVDs/USB Flash Drives:

- The cost of blank CDs, DVDs, or USB Flash Drives used exclusively for storage of digital discovery for appointed cases is reimbursable at a rate not to exceed \$1.00 each for CDs, DVDs, and \$30 for USB Flash Drives. External hard drives are reimbursable up to \$75.00. Receipts for all digital storage devices claimed for reimbursement must be attached to the fee application.

F. 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.

For information on direct billing of IDS for appointed cases using JurisLink and iWebVisit in lieu of reimbursement see <https://www.ncids.org/emergency-teleconference-policy/>.

G. 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 specific appointed case file, documented in the itemized billing record, and will not be reimbursed if they involve routine administrative office tasks.

H. Providing Closed Client Files:

- If a client requests their 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.
- 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 their file and will reimburse an attorney for postage expenses with a receipt.
- IDS will not seek recoupment of these expenses.
- IDS does not advise attorneys about the Rules of Professional Conduct, nor about the obligation to the client to provide closed files. Attorneys are directed to contact the NC State Bar directly at 919-828-4620 or electronically via <https://www.ncbar.gov/for-lawyers/ethics/>.

I. Other Expenses:

- For all "other" expenses specifically used for appointed representation of an individual client that cumulatively total \$25.00 or more (e.g., out-of-house copies, parking, postage, client court hearing clothing, etc.), an applicant must attach receipts or supporting documentation to the fee application. If "other expenses" do not cumulatively exceed \$25.00, receipts or supporting documentation are not required to be attached to the fee application. **However, all receipts for all amounts claimed for reimbursement, including those that do not cumulatively total \$25.00, must be maintained by the attorney for 5 years and must be made available to IDS upon request, for audit purposes.**
- Client court clothing: If it is necessary to provide clothing appropriate for a court hearing for an appointed client the appointed attorney should first check with the local Public Defender's office to determine whether appropriate clothing is available. If there is no local Public Defender's office, or if the local Public Defender's office does not have appropriate clothing available, the appointed attorney should contact the IDS Fiscal Officer, (aaron.m.gallagher@nccourts.org), to obtain pre-approval for clothing reimbursement.
- No person may be paid for any services rendered other than the appointed attorney (or law firm), an in-house paralegal (see Section G), or an expert or investigator approved by the court (see Section V). No payment will be issued to a subcontractor, assistant, or other person whose services are listed as an expense.
- Normal Overhead operating expenses, including but not limited to, notebooks, paper, wi-fi, push pins, computers, external hard drives (that are not used exclusively for a single appointed client), copy machines, pens, etc., are not reimbursable. If you have a question about whether an expense is reimbursable contact aaron.m.gallagher@nccourts.org.

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).²
- 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 must provide the name, address, and social security number of the defendant at the top of form AOC-CR-225. If the client either has no social security number or the attorney is unable to obtain the client’s social security number despite reasonable efforts, the attorney must check the appropriate box on the fee application.

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.
- 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 must provide the name, address, and social security number of any potentially responsible parent or guardian on the form AOC-J-411 or check the box indicating that the attorney is unable to obtain the client’s social security number despite reasonable efforts.

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 must provide the name, address, and social security number of the respondent or any potentially responsible parent or guardian on the form AOC-G-200 or check the box indicating that the attorney is unable to obtain the client’s social security number despite reasonable efforts.

² 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.

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. 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 (For defense requested polygraph examinations that are preapproved by a judge, IDS pays a flat fee of \$750.00), medical procedures, lab testing, or defense requested sentencing plans; 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. Form AOC-CR-309, with both sides completed and accompanied by timesheets and receipts as set out by IDS expert policy guidance, should be sent to IDS via mail or fax or, if sent securely, via email to judicial.ids.experts@nccourts.org. **Ensure that the maximum amount is authorized by the judge on the line in Part II of Form AOC-CR-309; IDS cannot pay if that line is left blank.**
- 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.
- 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.

- See *Policies for Experts and Investigators* <https://www.ncids.org/ids-policies-and-rules/>.

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 lodging and/or airfare is required for an indigent lay witness, a booking by the IDS travel agency can be requested by sending a lay witness travel request form (found at <https://www.ncids.org/forms/travel-request-form-witnesses-and-attorneys/>) to Max Silva at Maxwell.G.Silva2@nccourts.org. That form must be signed by the judge if the witness is from out of state; if the witness is in-state, they must be subpoenaed.
- If the attorney seeking compensation for one or more lay witnesses in any category of case, the attorney should complete one form AOC-CR-235 ("Witness Attendance Certificate") per witness and submit it to the Clerk or Judge as required by G.S. 7A-314. The attorney should then send all signed AOC-CR-235 forms, along with a completed Side Two of form AOC-CR-382 ("Certification of Identity (Witness Attendance)") with payee info for all lay witnesses, and submit it to NCAOC Accounts Payable (via email to AccountsPayable@nccourts.org if sent securely).

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 <https://www.ncids.org/ids-policies-and-rules/> under the "Language Services" 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.
- If the attorney needs the services of a sign language interpreter in any category of case, the attorney 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 completed appointed attorney fee applications from the Clerk of Superior Court in the county where the case originated.
- Fee applications for Juvenile, Parent Defense, Session Court/Attorney for the Day, Special Proceeding, and Civil, are tasked to IDS via the appropriate Task Queue for cases.
- Adult criminal fee applications at the trial level must be appropriately eFiled and Served on OASIS@nccourts.org, be electronically served on IDS via eCourts File and Serve, and a

corresponding invoice must be submitted in OASIS immediately following electronic submission of the fee app.

See <https://www.ncids.org/oasis/>

- Fee applications that are mailed or emailed to IDS Financial Services directly by appointed attorneys cannot be processed and will not be paid.

B. Timing of Attorney Payments Information about the timing of attorney payments, including check run dates, is posted at <https://www.ncids.org/get-paid/payment-dates/>.

If attorneys or court officials have additional questions or concerns about these policies or other billing matters, they should contact Chad Boykin, IDS Assistant General Counsel, at (919) 890-2128 or Chadwick.E.Boykin@nccourts.org.

MEMORANDUM

To: Indigent Defense Attorneys, Public Defenders, Assigned Counsel
 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 ~~April 11~~ July 23, 2025

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 & Submission Processes:

Non-Capital Criminal Cases

To seek compensation in any non-capital criminal case at the trial level the appointed attorney must complete the most current version of the AOC-CR-225 Non-Capital Criminal Case Trial Level Fee Application¹, available at <https://www.ncids.org/ids-forms/>.

The completed fee application form must be submitted to the court via eCourts File & Serve <https://efilenc.tylertech.cloud/OfsEfsp/ui/landing>, served on OASIS@nccourts.org, and immediately following submission of the fee app a corresponding invoice for the case must be submitted via OASIS at <https://idsbilling.org/>.

For more information see <https://www.ncids.org/oasis/>.

Note: Managed Assigned Counsel (“MAC”) do not use fee applications for payment and instead bill for services using the MAC payment system, providing recoupment documentation to the court according to their IDS contracts and policies.

Juvenile Delinquency Cases

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.

To seek compensation in any juvenile delinquency case or undisciplined contempt at the trial level the appointed attorney must complete and submit the most current version of the AOC-J-411 Juvenile Delinquency Trial Level Fee Application, available at <https://www.ncids.org/ids-forms/>.

The completed fee application form must be submitted to the court via eCourts File & Serve <https://efilenc.tylertech.cloud/OfsEfsp/ui/landing>.

Note: Managed Assigned Counsel (“MAC”) do not use fee applications for payment and instead bill for services using the MAC payment system, providing recoupment documentation to the court according to their IDS contracts and policies.

Non-Criminal Cases

To seek compensation in any non-criminal case at the trial level, such as abuse/neglect/dependency, termination of parental rights, competency, commitment, and child support contempt, the appointed attorney or guardian ad litem must complete and submit the most current version of the AOC-G-200 (Civil Case Trial Level Fee Application), available at <https://www.ncids.org/ids-forms/>. The completed fee application form must be submitted to the court via eCourts File & Serve <https://efilenc.tylertech.cloud/OfsEfsp/ui/landing>.

Note: Managed Assigned Counsel (“MAC”) do not use fee applications for payment and instead bill for services using the MAC payment system, providing recoupment documentation to the court according to their IDS contracts and policies.

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 and invoices for any cases appointed on or after January 01, 2026, must be signed by the appointed attorney and submitted ~~to the trial judge within no more than ninety (90) days 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 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* <https://www.ncids.org/ids-policies-and-rules/>.
 - Fee deadline waivers are authorized only when there are serious medical, health, safety, or force majeure reasons beyond the control of the attorney that prevent their ability to timely seek payment.

C. General Billing Principles:

- In assigned cases, the “Name of Applicant” on the fee application is always the individual attorney who provided the client representation. If payment is to be made to that individual attorney, the “Payee” should be listed as “same”. If payment is to be made to the applicant’s law firm, the “Payee” should state the name of the law firm. Per U.S. tax law and State policy,

the Payee must have a State of North Carolina Substitute W-9 Form on file with IDS Fiscal Services and the Office of State Controller. See <https://www.ncids.org/sub-w-9-form/>.

- Attorney payments must be issued by IDS via direct deposit/electronic payment (ePay). See <https://www.ncids.org/direct-deposit-epay-form/>.
 - ~~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, they should report that time as 1.50 hours, not 1.30 hours.) Attorney time must be tracked and reported on fee apps in hours and tenths of an hour (6-minute increments) using decimals. For 1-6 minutes worked bill for “.1” hour, for 7-12 minutes worked bill for “.2” hours, etc., actual time worked is rounded up to the nearest tenth of a decimal. If an attorney works 1 hour and 46 minutes, for example, they would bill “1.8” hours.
 - ✓ See the “Tenths of an Hour Decimal Conversion” chart below:

<u>Minutes</u>	<u>Decimal (6-min)</u>
<u>1-6</u>	<u>.1</u>
<u>7-12</u>	<u>.2</u>
<u>13-18</u>	<u>.3</u>
<u>19-24</u>	<u>.4</u>
<u>25-30</u>	<u>.5</u>
<u>31-36</u>	<u>.6</u>
<u>37-42</u>	<u>.7</u>
<u>43-48</u>	<u>.8</u>
<u>49-54</u>	<u>.9</u>
<u>55-60</u>	<u>1</u>

- ~~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 in court waiting 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).
 - ✓ Example: Appointed attorney is in court waiting for 3 appointed cases to be called and waits 1 hour total.
 - The attorney **would not** claim 1-hour of “time in court waiting” for each case (the attorney did not wait 3 hours).
 - The attorney **would** claim .4 hours of “time in court waiting” for each case.

- The 1 hour of “time in court waiting” is shared by the 3 clients, this is 20 minutes each, using the “Tenths of an Hour Decimal Conversion” chart above 20 minutes is equal to .4 hours.

- Attorney time spent preparing or submitting a fee application is not compensable.
 - ~~Absent exceptional circumstances that warrant personal delivery in non-eCourts jurisdictions, 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.~~
 - ~~An Attorney applicant~~ must maintain an itemized billing record for each appointed case that provides sufficient detail regarding counsel’s services to demonstrate that the claim for compensation is reasonable. The record must include the date of work, a brief description of work performed, and time spent per item. These records must be retained by the attorney and be available for review by IDS for 5 years for audit purposes, ~~and~~ regardless of whether the court requires the itemized billing record to be attached to the fee application.
- ✓ **Sample:**

Attorney Name: XXX

Case Number: 23CR123456

Date	Brief Description of Work	Time Spent Per Item
3/05/2025	Appointment and case review	.5 hours
3/07/2025	Client meeting	1.0 hour
3/10/2025	Client phone call	.55 hours
3/12/2025	Review discovery	1.2.4 hours
3/20/2025	Court hearing	1.6 hours
Total		4.7.8 hours

- If required by the presiding judge, ~~by or~~ local rule, or by request of the IDS Director, an applicant must attach the itemized billing record described above to the fee application.

D. The Identity of the Attorney Applicant:

- The fee application forms require the attorney applicant to identify ~~himself or herself~~ themselves 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:

- ✓ The attorney ~~is are~~ a private attorney and the attorney ~~is are~~ submitting one fee application for one client pursuant to an individual appointment to represent that person; or
- ✓ The attorney ~~is are~~ a private attorney and the attorney ~~is 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. To file a fee application for a per session or per day basis, the attorney should, ~~depending on jurisdiction:~~

- ~~Write “various clients” in the file number box and attach the court docket to the paper fee application for non eCourts jurisdictions; or~~
 - Enter one file number of one case from the session hearing in the file number box and attach the court docket to the fee application ~~for eCourts jurisdictions submitting via eCourts File and Serve.~~
 - If there is a session with no clients, create and enter an “R file” number for the session hearing (see the clerk for instructions on creating an “R file” number) and attach the court docket to the fee application submitting via eCourts File and Serve.
- Check the “**public defender**” box *if*: The attorney ~~are~~is a salaried state employee who works in one of the district public defender offices, and the attorney are submitting the fee application solely for recoupment purposes (see Section IV. below).
- Check the “IDS contract counsel” box *if*: The attorney is a private attorney who handled the case pursuant to a contract with the IDS Office.
- ~~Check the “IDS contract counsel” box *if*: The attorney ~~is~~are a private attorney who handled the case pursuant to a contract with the IDS Office, the attorney is paid a set amount at regular intervals pursuant to the contract and is 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~~all 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 the attorney ~~are~~is submitting one fee application for one client where there are multiple file numbers, the attorney should report the file number associated with the highest charge in the box labeled “File No.,” and should report any other file numbers in the box labeled “Additional File Nos.”
 - OASIS Invoice: ~~For adult criminal cases at the trial level, the OASIS invoice only allows/requires a single File No., in OASIS when invoicing for a single fee app covering multiple cases enter only the file number associated with the highest charge, which is also the file number used to file the fee app in eCourts File and Serve.~~
- Non-Capital Criminal Dispositions:
 - ✓ In completing a fee application for one client with multiple cases, the attorney 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.”

Example: If the attorney 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, the attorney 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.”

Example: If the attorney 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.*, 10/10/25 (phone) or 10/10/25 (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 or that the social security number could not be found despite reasonable efforts.
- ✓ 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 the attorney ~~are-is~~ 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 the attorney ~~are-is~~ 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~~ payee information
- ✓ 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.
 - ✗ ~~W~~When using OASIS, the fee application served on IDS with a corresponding invoice may be paid prior to the judge signing the fee application. However, if the judge reduces the fee award before signing or refuses to sign the fee application the judge will notify the IDS CFO, and the attorney must refund any overpayment.

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 the attorney ~~are-is~~ 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 payee information 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.~~ IDS has the statutory authority to issue payment to an appointed guardian ad litem only in certain cases, see <https://www.ncids.org/resources/entitlement-to-and-payment-of-gals/>
- ~~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 the attorney ~~are-is~~ 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 the attorney ~~are-is~~ 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 payee information 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 only under the specific circumstances described and 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 to prevent having paid expenses that are not reimbursable.

Policy Alternative:

~~Mileage is not a reimbursable expense for all cases disposed on or after January 01, 2026. However, time spent traveling outside the county of the attorney’s office to provide representation is compensable at the hourly rate.~~

~~A. In State Travel:²~~

- ~~• **Mileage:** Mileage is generally not reimbursable, the **only** exceptions are if the appointed attorney has been recruited by IDS to accept an out-of-district case in which the attorney is **not** on the appointed counsel roster, or, when mileage has been specifically contracted for under the Managed Assigned Counsel (“MAC”) program. Mileage is not reimbursable for travel within the county where the attorney’s office is located. Mileage is not reimbursable for travel to, from, or within any county where the attorney is on the appointed counsel roster. In the rare instances where mileage is reimbursable it is only reimbursable at the IDS approved rate and documentation from IDS pre-approving mileage must be attached to the fee app. If pre-approval documentation is not attached to the fee app any mileage claimed will not be paid. For current mileage reimbursement rates see: <https://www.ncids.org/counsel-rates/> (“Expense Rates PAC”). The fee application or time sheets must indicate the number of miles traveled.~~

Mileage Reimbursement Policy

Mileage is generally not reimbursable under IDS policies. However, mileage related to out-of-county cases or out-of-county case-related travel may be reimbursed under the following circumstances:

- ~~1. Out-of-District Recruitment: Mileage is reimbursable if IDS has specifically recruited an attorney to accept a case in a county where the attorney is *not* on the appointed counsel roster.~~
- ~~1. MAC Program and Other Contracts: Mileage is reimbursable when it has been explicitly contracted for under the terms of a Managed Assigned Counsel (MAC) program or other contractual agreement.~~
- ~~2. Case-Related Travel Outside the County of Appointment: Mileage is reimbursable when an attorney must travel outside the county of appointment for case-related reasons—for example, to visit a client housed at Central Prison or to interview a witness who resides in another county. Such mileage is reimbursable at the IDS approved rate and does not require separate pre-approval if clearly documented as case-related.~~

Additional Clarifications:

- ~~• Mileage is not reimbursable for travel within the county where the attorney’s office is located.~~
- ~~• Mileage is not reimbursable for travel to, from, or within any county where the attorney is on the appointed counsel roster, regardless of whether that county is the same as the county where the attorney’s office is located.~~
- ~~• Mileage that is reimbursable under the criteria above will be paid only at the IDS approved rate. When pre-approval is required, documentation of IDS approval must be attached to the fee application.~~
- ~~• If required pre-approval documentation is missing, any mileage claimed will be denied.~~

~~Attorneys must indicate the number of miles traveled on the fee application or attached time sheet and clearly describe the purpose of the travel.~~

~~For current mileage rates, see: [Expense Rates PAC](#)~~

Alternative: Streamlined policy with FAQ example

Mileage Reimbursement Policy

~~Mileage is generally not reimbursable.~~ Mileage is reimbursable only under the following limited circumstances:

² ~~Reimbursement rates for travel related expenses are based on the current travel allowances for State employees. See G.S. 138-6.~~

1. **PAC** Out-of-District Recruitment: When IDS has specifically recruited an attorney to take a case in a county where the attorney is *not* on the appointed counsel roster.
2. MAC Program Contracts: When mileage reimbursement has been explicitly included in a Managed Assigned Counsel (MAC) program agreement.
3. Case-Related Travel Outside the County of Appointment: Travel for case purposes—e.g., visiting a client in Central Prison or interviewing a witness in another county—is reimbursable at the IDS-approved rate and does not require separate pre-approval.

Mileage is not reimbursable:

- For travel within the county where the attorney’s office is located.
- For travel to, from, or within a county where the attorney is on the appointed counsel roster, regardless of whether that county is the same as where the office is located.

All reimbursable mileage must be listed on the fee application or time sheet, with the number of miles and purpose of travel clearly documented. Reimbursement is limited to the IDS-approved mileage rate. When pre-approval is required, documentation must be attached, or the claim will be denied.

See: [Expense Rates PAC](#)

Mileage FAQ

Mileage Reimbursement FAQ

Q1: Can I be reimbursed for driving to court in my home county? A: No. Mileage is not reimbursable for travel within the county where your office is located.

Q2: I’m on the roster in County A. Can I be reimbursed for travel to a hearing there? A: No. Mileage is not reimbursable for travel to, from, or within a county where you are on the appointed counsel roster.

Q3: I drove to Central Prison to visit a client appointed in another county. Can I be reimbursed? A: Yes. Mileage for case-related travel outside the county of appointment (e.g., client meetings or witness interviews) is reimbursable at the IDS-approved rate.

Q4: Do I need pre-approval for mileage related to an out-of-county witness interview? A: No, not if the travel is clearly case-related and documented. But if your situation is unusual, you may want to seek clarification from IDS.

Q5: I was recruited by IDS to take a case in a different district. Is mileage reimbursable? A: Yes, if you're not on the roster for that district and IDS recruited you for the case.

Q6: What happens if I forget to attach pre-approval documentation when it’s required? A: The mileage claim will be denied. Pre-approval is mandatory when required by policy.

Policy Alternative:

~~Mileage is not a reimbursable expense for all cases disposed on or after January 01, 2026. However, time spent traveling outside the county of the attorney’s office to provide representation is compensable at the hourly rate.~~

Meals:

• Meals are only reimbursable if there is an overnight stay and then in accordance with the current IDS authorized per diem, which is inclusive of gratuity, with one per diem per overnight stay. Receipts are not required. For current per diem rates see: <https://www.ncids.org/counsel-rates/> (“Expense Rates PAC”).

Lodging:

The actual cost of over-night hotel lodging is reimbursable, not to exceed the current IDS authorized rate, plus actual taxes incurred. A valid hotel receipt is required, and credit card statements will not be accepted. For current lodging rates see: <https://www.ncids.org/counsel-rates/> (“Expense Rates PAC”). For lodging in an establishment that is being rented out by a third party, which may include, yet is not limited to, online website house or room rental services, such as AirBnB, the actual cost of over-night lodging is reimbursable, not to exceed the current IDS authorized rate, plus actual taxes incurred. The actual taxes incurred must be specifically documented on an itemized receipt). Any other itemized fees, such as cleaning fees, are only reimbursable to the extent that they do not exceed the current lodging rate when amortized across nights. If booking for purposes of hosting multiple defense team members (e.g., for a trial), seek pre-approval from the presiding judge.

Third party lodging agreements are not allowed among family members or where such agreements or payments create a financial conflict of interest.

A. B. Out-Of-State Travel: Attorneys must obtain prior written approval from a judge (or for MAC attorneys, an IDS Regional Defender) before incurring out-of-state travel expenses, this approval documentation may be an informal email and must be attached to the fee application.

~~Attorneys are urged to obtain prior written approval from a Judge before incurring out-of-state travel expenses.~~

- Travel Costs: Reasonable travel costs, including parking fees and tolls, are reimbursable with receipts. Fines for traffic and parking violations are the responsibility of the attorney and are not reimbursable by the state.
- Meals: Meals are only reimbursable if there is an overnight stay and then in accordance with the current IDS authorized per diem, which is inclusive of gratuity, with one per diem per overnight stay. Receipts are not required. For current per diem rates see: <https://www.ncids.org/counsel-rates/> (“Expense Rates PAC”).
- Lodging: The actual cost of over-night lodging is reimbursable, not to exceed the current IDS 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 Rates PAC”).
 - AirBnB and other similar services can be reimbursed when total costs are at or below the allowed lodging rates. Note that non-tax hidden fees (cleaning fees, etc.) must be included in the calculation for the maximum nightly lodging rate. If an AirBnB is to be booked for purposes of hosting multiple defense team members (e.g., for a trial), ~~we encourage you to seek pre-approval from the presiding judge who will set the fee.~~

C. Photocopying:

- Photocopying should be kept to a minimum because the court system is now paperless.
- **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 and whether they were single or double-sided on the fee application.
 - ✓ When invoicing **in-house** copies in OASIS the invoice will calculate \$0.10 per page for single-sided copies and \$0.16 for double-sided copies.

- The actual cost of **out-of-house** copies are reimbursable with a receipt, the receipt must be attached to the fee application and credit card statements will not be accepted.
 - ✓ When invoicing for out-of-house copies in OASIS use the “other expenses” box. The receipts for the copies must be attached to the fee application.
 - ✓ **Do not** enter out-of-house copies in the OASIS copy boxes, those boxes are for in-house copies only and apply the in-house copy reimbursement rates.

D. Printing Digital Discovery:

- 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. Digital Storage CDs/DVDs/~~Audiotapes~~USB Flash Drives: ~~TRASH THIS???~~

- The cost of blank CDs, DVDs, or ~~audiotapes~~ USB Flash Drives used exclusively for storage of digital discovery for appointed cases is reimbursable at a rate not to exceed \$1.00 each for CD’s DVD’s and \$30 for USB Flash Drives. External hard drives are reimbursable up to \$75.00. Receipts for all digital storage devices claimed for reimbursement must be attached to the fee application.

F. 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.

For information on direct billing of IDS for appointed cases using JurisLink and iWebVisit in lieu of reimbursement see <https://www.ncids.org/emergency-teleconference-policy/>.

G. ~~Digital Legal Research:~~

- ~~I deleted this accidentally but — we should stop reimbursing for online case research — no one bills for this, these services are much cheaper than they were twenty years ago — Glenn Gerding and I have discussed in the past —~~
- ~~Courtsearch, NC 123, DMV and DOC searches, etc.: The actual case-related costs of any such digital case searches are reimbursable only if receipts are provided. If actual costs are not incurred, an attorney may be compensated for their time according to the applicable hourly rate but may not be compensated any amount per search.~~

H. ~~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 specific appointed case file, documented in the itemized billing record, and will not be reimbursed if they involve routine administrative office tasks.

I. 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 their own records. Thus, if~~ a client requests their 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 their 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 their file and will reimburse an attorney for postage expenses ~~claimed in compliance with Section III.K, below with a receipt. If these activities are performed at the conclusion of the representation, the appointed attorney should include the allowed time and expenses on their 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 their 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 their own records, IDS will not seek recoupment of these expenses.

J. Other Expenses:

- For all “other” expenses~~”~~ that cumulatively total \$25.00 or more (*e.g.*, out-of-house copies, parking, postage, ~~USB file~~ flash drives, client court hearing clothing, etc.), an applicant must attach receipts or supporting documentation to the fee application. If “other expenses” do not cumulatively exceed \$25.00, receipts or supporting documentation are not required to be attached to the fee application. **However, all receipts for all amounts claimed for reimbursement, including those that do not cumulatively total \$25.00, must be maintained by the attorney for 5 years and must be made available to IDS upon request, for audit purposes.**
- Client court clothing: If it is necessary to provide clothing appropriate for a court hearing for an appointed client the appointed attorney should first check with the local Public Defender’s office to determine whether appropriate clothing is available. If there is no local Public Defender’s office, or if the local Public Defender’s office does not have appropriate clothing available, the appointed attorney should contact the IDS Fiscal Officer, (aaron.m.gallagher@nccourts.org, to obtain pre-approval for clothing reimbursement.
- ~~Normal~~
- ~~Normal~~ Overhead operating expenses, such including but not limited to, as notebooks, paper, wi-fi, push pins, computers, external hard drives (that are not used exclusively for a single appointed client), copy machines, pens, etc., are not reimbursable. If you have a question about whether an expense is reimbursable contact aaron.m.gallagher@nccourts.org.
- ~~—~~

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).³
- If the Judge signs Section IV. of form AOC-CR-~~225,~~ and 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 must provide the name, address, and social security number of the defendant at the top of form AOC-CR-225. If the client either has no social security number or the attorney is unable to obtain the client’s social security number despite reasonable efforts, the attorney must check the appropriate box on the fee application.

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

³ 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.

- 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.
- 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 must provide the name, address, and social security number of any potentially responsible parent or guardian on the form AOC-J-411 or check the box indicating that the attorney is unable to obtain the client's social security number despite reasonable efforts.

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 must provide the name, address, and social security number of the respondent or any potentially responsible parent or guardian on the form AOC-G-200 or check the box indicating that the attorney is unable to obtain the client's social security number despite reasonable efforts.

D. Fee Applications Submitted by Public Defenders or IDS Contract Counsel~~or IDS Contract Counsel~~: ~~TRASH 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. 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 ~~(⁴-For defense requested polygraph examinations that are preapproved by a judge, IDS pays a flat fee of \$750.00),~~ medical procedures, lab testing, or defense requested sentencing plans;⁵ 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. Form AOC-CR-309, with both sides completed and accompanied by timesheets and receipts as set out by IDS expert policy guidance, should be sent to IDS via mail or fax or, if sent securely, via email to judicial.ids.experts@nccourts.org. Please-Ensure that the maximum amount is authorized by the judge on the line in Part II of Form AOC-CR-309; ~~wel~~IDS cannot pay if that line is left blank.
- 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.
- 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 lodging and/or airfare is required for an indigent lay witness, a booking by the IDS travel agency can be requested by sending a lay witness travel request form (found at <https://www.ncids.org/forms/travel-request-form-witnesses-and-attorneys/>) to Max Silva at Maxwell.G.Silva2@nccourts.org. That form must be signed by the judge if the witness is from out of state; if the witness is in-state, they must be subpoenaed.
- If the attorney seeking compensation for aone or more lay witnesses in any category of case, the attorney should complete one form AOC-CR-235 ("Witness Attendance Certificate") per witness and submit it to the Clerk or Judge as required by G.S. 7A-314. The attorney should

⁴~~-For defense requested polygraph examinations that are preapproved by a judge, IDS pays a flat fee of \$750.~~

⁵~~-For defense requested sentencing plans that are preapproved by a judge, IDS pays a flat fee of \$5050.~~

~~also then send all signed AOC-CR-235 forms, along with a completed~~ Side Two of form AOC-CR-382 (“Certification of Identity (Witness Attendance)”) with payee info for all lay witnesses, and submit it to ~~IDS Financial Services.~~ NCAOC Accounts Payable (via email to AccountsPayable@nccourts.org if sent securely).

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* <https://www.ncids.org/ids-policies-and-rules/> under the “Language Services” 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.
- If the attorney needs the services of a sign language interpreter in any category of case, the attorney 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 completed appointed attorney fee applications from 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.~~
- ~~In eCourts counties completed f~~ee applications for Juvenile, Parent Defense, Session Court/Attorney for the Day, Special Proceeding, and Civil, are tasked to IDS via the appropriate Task Queue for cases.
- ~~In eCourts counties using OASIS, adult~~Adult criminal fee applications at the trial level, must be appropriately eFiled and Served on ~~OASIS@nccourts.org~~OASIS@nccourts.org, ~~once accepted into the court file by the clerk, the fee application is be~~ electronically served on IDS via eCourts File and Serve by the clerk, and and with the corresponding invoice must be from OASIS, is paid. submitted in OASIS immediately following electronic submission of the fee app.
 - See <https://www.ncids.org/oasis/>
- Fee applications that are mailed or emailed to IDS Financial Services directly by appointed attorneys cannot be processed and will not be paid.

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 <https://www.ncids.org/get-paid/payment-dates/>.

VII. Frequently Asked Questions About 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](mailto:Whitney.Fairbanks@nccourts.org) [Chad Boykin](mailto:Chad.Boykin@nccourts.org), IDS Assistant ~~Director~~/General Counsel, at (919) [354-7200890-2128](tel:354-7200890-2128) or Whitney.B.Fairbanks@nccourts.org Chadwick.E.Boykin@nccourts.org.