OFFICE OF INDIGENT DEFENSE SERVICES
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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.*

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, located at https://www.ncids.org/ids-policies-and-rules/.

(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. If the attorney withdraws from an active case, the attorney must submit the fee application no later than ninety (90) days from the date the withdrawal is granted.

8. Format and Filing Requirements
   Fee applications must comply in form and substance with current IDS Attorney Fee and Expense Policies.
   - 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/counsel-rates/

(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

Rule	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:	https://www.ncids.org/ids-policies-and-rules/
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	Consolidated related subsections (former 1.1(1) –1.1(4); effective January 1, 2026 • 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
1.2 Entitlement to Counsel (NEW)	Converted from placeholder to substantive rule; codifies longstanding statutory interpretation and court practices. New rule effective January 1, 2026
1.3 Notification Responsibilities	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.
1.4 Determining Indigency	Streamlined and reorganized from original version; maintains statutory language while adopting plain-language structure. Effective January 1, 2026.
1.5 Appointment Procedure	Clarified appointment mechanisms for districts with and without public defenders; added delegation standards and attorney review rights; effective January 1, 2026. • 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	Simplified structure and clarified required findings under G.S. 15A-1242; effective January 1, 2026.

1.7 Withdrawal of Appointed Counsel	Added new subsection (a1) on conflicts; clarified contract withdrawal requirements; effective January 1, 2026. • Subsection (a1) adopted effective September 24, 2010
1.8 Contracts	Reaffirmed IDS Director's authority and cross-referenced governing statutes; minor edits for clarity. Effective January 1, 2026.
1.9 Payment of Appointed Counsel	Reorganized for readability; codified digital filing, supporting documentation rules, and fee application deadline. New structure effective January 1, 2026. • 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
1.10 Supporting Services	Edited for clarity and aligned with standardized expense policies; effective January 1, 2026. • Section amended December 9, 2011
1.10A Alternative Service Programs	Added new rule authorizing IDS Director to implement alternative delivery models for non-attorney services; effective January 1, 2026. • Section added October 29, 2021
1.11 Recoupment of Fees	Expanded to include civil cases; clarified due process requirements and valuation standards; effective January 1, 2026. • Subsections (a) and (b) and commentary amended effective September 19, 2014