Part 2
Rules for Providing Legal Representation in Capital Cases

This second part addresses the procedure to be followed in capital cases. The 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. Fee applications for capital representation filed on or after that date will be governed by these rules.

These rules are intended to set forth a comprehensive system for providing legal representation in cases that potentially may be tried capitally or that have resulted in a sentence of death. Unlike the Rules for Continued Delivery of Services in Non-Capital Criminal and Non-Criminal Cases, described in Part 1, this part departs significantly from previous practice and procedure. The approach taken below reflects the intent of the IDS Act, which places with the Office of Indigent Defense Services (IDS Office) the responsibility for appointing and compensating counsel in capital cases.

This part is divided into four subparts, corresponding to the major areas requiring attention in capital litigation:

- Appointment and Compensation of Trial Counsel
- Appointment and Compensation of Appellate Counsel
- Appointment and Compensation of Post-Conviction Counsel
- Appointment and Compensation of Experts and Others Providing Services Related to Legal Representation

This part also includes an appendix containing standards that attorneys must meet to be considered for appointment as trial, appellate, or post-conviction counsel in capital cases.

The rules are authorized by Chapters 7A and 15A of the North Carolina General Statutes (G.S.), and by the IDS Act. The rules supercede the provisions on capital representation in Section D. of the Rules and Regulations of the North Carolina State Bar (State Bar Rules) and any provisions on capital representation in local bar plans issued pursuant to the State Bar Rules. As of July 1, 2001, those rules, which were authorized by former G.S. 7A-459, are no longer effective.

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

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

Part 2A
Appointment and Compensation of Trial Counsel in Capital Cases

2A.1 Coverage of this Subpart

(a) Applies to Capital Trials

This subpart applies to all capital offenses and all non-capital criminal charges brought contemporaneously with or subsequently joined with a capital offense. A “capital offense” means any first-degree murder charge or charge of murder where the degree 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. The term "capital defendant" means a defendant charged with a capital offense.

(b) Authority to Implement Other Programs, Plans, and Contracts

Nothing in these rules shall prohibit assignment of otherwise qualified counsel to represent indigent defendants in capital trials 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.

[Subsection (a) amended effective May 6, 2005]

Authority: G.S. 7A-498.2(b); 7A-498.3(a); 7A-498.5(c)(7), (c)(8), (d)

Commentary

Effective May 6, 2005, subsection (a) 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).

2A.2 Appointment of Trial Counsel

(a) Provisional Appointment of Counsel

Upon learning that a defendant has been charged with a capital offense, the IDS Director may immediately appoint a lawyer on a provisional basis to conduct a preliminary investigation and determine whether the defendant is indigent and needs appointed counsel. Provisional counsel shall report the results of his or her investigation to the IDS Director. If the defendant has not had a first appearance in court, the IDS Director may authorize provisional counsel to attend the defendant's first appearance and advise the court whether the case is a capital case as defined by these rules and therefore subject to the appointment procedures in this subpart. Provisional counsel is authorized to take steps to protect the capital defendant's rights pending appointment of trial counsel by the IDS Director, but the IDS Director may impose limitations on the scope of services to be provided by provisional counsel.

(b) Assignment of IDS Office

At the defendant's first appearance in district court, the court shall determine whether the defendant is indigent pursuant to paragraph 1.4 of the Rules for the Continued Delivery of Services in Non-Capital Criminal and Non-Criminal Cases, and charged with a capital offense as defined in paragraph 2A.1(a) above. If the court so finds, it shall notify the IDS Director of the need to appoint counsel for the capital defendant in accordance with these rules. If the defendant is charged with a capital offense in an indictment and his or her first appearance is in superior court, the court shall determine whether the defendant is indigent and is charged with a capital offense as defined in paragraph 2A.1(a) above. If the court so finds, the court shall ensure that the IDS Director

is notified of the need to appoint counsel for the capital defendant, in accordance with these rules, by email, facsimile, or telephone.

(c) Appointment of First Trial Counsel

The IDS Director shall appoint at least one lawyer for a capital defendant as early in the process as possible. The IDS Director shall maintain a list of lawyers eligible for appointment as lead or associate counsel. The list shall consist of lawyers who are eligible to be lead or associate counsel pursuant to the procedures in Appendix 2A of these rules, and may include attorneys in private practice, public defenders and assistant public defenders, and attorneys with whom the IDS Office contracts or employs to provide representation in capital cases. If the first lawyer appointed will serve as lead trial counsel, the IDS Director shall appoint that lawyer from the list of lawyers eligible for appointment as lead counsel. If the first lawyer appointed will serve as associate trial counsel, the IDS Director shall appoint that lawyer from the list of lawyers eligible for appointment as lead or associate counsel. Appointment orders, signed by the IDS Director, shall be distributed to the clerk of superior court, the district attorney, the appointed attorney, and the defendant.

(d) Appointment of Second Trial Counsel

Upon request by and consultation with the current appointed lawyer, the IDS Director may appoint a second lawyer for a capital defendant prior to a declaration at a hearing pursuant to Rule 24 of the General Rules of Practice that the case will be prosecuted capitally, if the IDS Director finds good cause justifying an earlier appointment. If a second lawyer has not been appointed prior to a hearing pursuant to Rule 24 of the General Rules of Practice at which a judge determines that the state may prosecute the case capitally, the current appointed lawyer shall immediately notify the IDS Director of the judicial determination and the IDS Director shall immediately appoint a second lawyer. The IDS Director shall maintain a list of lawyers eligible for appointment as lead or associate counsel. The list shall consist of lawyers eligible to be lead or associate counsel pursuant to the procedures in Appendix 2A of these rules, and may include attorneys in private practice, public defenders and assistant public defenders, and attorneys with whom the IDS Office contracts or employs to provide representation in capital cases. If the second lawyer appointed will serve as lead trial counsel, the IDS Director shall appoint that lawyer from the list of lawyers eligible for appointment as lead counsel. If the second lawyer appointed will serve as associate trial counsel, the IDS Director shall appoint that lawyer from the list of lawyers eligible for appointment as lead or associate counsel. The IDS Director shall consult with the first lawyer appointed about the appointment of the second lawyer. Appointment orders, signed by the IDS Director, shall be distributed to the clerk of superior court, the district attorney, the appointed attorney, and the defendant.

(d1) 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. 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.

(e) No Subsequent Appointment of Retained Counsel

If a retained attorney becomes unable to continue representing a capital defendant because the defendant or any third party can not fulfill the terms of the financial agreement between the attorney and the defendant or any third party, the retained attorney may file with the court a motion to withdraw. If the court permits the retained attorney to withdraw, that attorney is not eligible to be appointed to represent the defendant.

(f) Litigation of Extraordinary Writ in Appellate Division Outside Scope of Appointed Trial Counsel's Representation

Counsel appointed to represent a capital defendant in the Trial Division is not authorized to prepare, file, or litigate a petition for writ of certiorari or other extraordinary writ in the Appellate Division prior to the entry of final judgment in the Trial Division. If counsel appointed pursuant to paragraph 2A.2(c) or 2A.2(d), above, determines that a petition for an extraordinary writ in the Appellate Division is warranted, counsel shall notify the Office of Appellate Defender. The Office of Appellate Defender or counsel appointed by the Appellate Defender pursuant to paragraph 2B.2(c), below, shall file the petition only if it will present a potentially meritorious issue for review.

[Subsection (a) amended effective January 10, 2011 and May 20, 2011]
[Subsection (d) amended effective June 6, 2008]
[New subsection (d1) adopted effective September 24, 2010]
[New subsection (e) adopted effective May 6, 2005]
[New subsection (f) adopted effective February 27, 2009]

Authority: G.S. 7A-450(b), (b1); 7A-451(b); 7A-452(a); 7A-498.3(b), (c); 7A-498.5(d), (h)

Commentary

Subsection (a): This provision, allowing for designation of provisional counsel, is in recognition of the importance of affording counsel to capital defendants as soon as possible. The IDS Office expects that it will receive daily information from the Administrative Office of the Court's Automated Criminal Information System (ACIS) about the murder warrants issued in each county. This information is entered into ACIS automatically and immediately in those counties in which the computerized Magistrate System is installed, and manually by clerks of court in the remaining counties. Once a day, the IDS Office will receive email generated by ACIS listing all murder warrants entered into the system in the previous twenty-four hours.

Subsection (b): When a district or superior court judge finds a capital defendant indigent, he or she will notify the IDS Director by the most convenient immediate means—either email, facsimile, or telephone—of the defendant's name, the docket numbers of each of the warrants or indictments for which the defendant needs appointed counsel (including contemporaneously charged non-capital offenses), and the offenses charged. The IDS Director will approve and make available a form (AOC-CR-427) on which the judge will record the means by which the IDS Director was notified. The judge will file the form with the clerk of superior court.

Subsections (c) and (d): In capital cases, G.S. 7A-452(a) provides that, where practicable, either lead or associate defense counsel shall be a member of the bar in that judicial division.

These subsections authorize the IDS Director to appoint lead or associate trial counsel, or both. Subsection (d) was amended effective June 6, 2008 to limit the circumstances in which the IDS Director may appoint a second attorney to represent a capital defendant prior to a declaration at a Rule 24 hearing that the case will be prosecuted capitally. If a case is declared non-capital after the IDS Director has appointed two counsel, the IDS Director will consult with appointed counsel and may remove one counsel.

Subsection (d1): This subsection was added effective September 24, 2010. If appointed counsel moves to withdraw due to a conflict, in determining the appropriate amount of compensation pursuant to Rule 2A.4(a), below, the IDS Director shall consider the timeliness of counsel's efforts to identify the conflict and to file the motion to withdraw.

Subsection (f): This subsection was added effective February 27, 2009 to clarify 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 in a capital case and to provide a procedure for pursuing such litigation if trial counsel deems it necessary.

2A.3 Waiver of Counsel

(a) Standard

An indigent capital defendant 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 defendant 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 defendant's age, education, familiarity with the English language, mental condition, and the complexity of the matter.

(b) Standby counsel in capital cases

If a capital defendant has elected to proceed without the assistance of counsel, the trial judge shall immediately notify the IDS Director, who may appoint, in his or her discretion, standby counsel 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]

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 capital defendant. If a capital defendant has no counsel, the court should determine whether the defendant wishes to waive the right to both appointed and retained counsel. If a capital defendant wishes to represent himself or herself, the court must conduct the inquiry required by G.S. 15A-1242 on self-representation.

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 capital cases, the above rule directs the trial judge to immediately notify the IDS Director, who may appoint standby trial counsel.

2A.4 Compensation and Recoupment

(a) Compensation

Appointed counsel who represented an indigent capital defendant at trial shall submit to the IDS Director an itemized fee application at least annually on a form prescribed by the IDS Director, showing the time counsel spent in trial representation of the defendant. If an attorney seeks compensation for time spent working on multiple cases simultaneously, the attorney's time shall be prorated among each of the cases involved. Following review of the fee application, the IDS Director shall determine the amount of compensation and forward the award to IDS Financial Services for payment. If counsel is required pursuant to paragraph 2A.5(a)(iv) below to meet with the IDS Director to review the representation, the fee shall include compensation for time spent in that review. Private counsel appointed to represent an indigent capital defendant must apply for interim payments at least once per year. 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 IDS Director 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 IDS Director 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. Counsel may make a written request for a review of the amount of compensation approved by the IDS Director from a committee of the IDS Commission designated by the IDS Commission to conduct such review. A retained attorney is not eligible to receive state funds to supplement the amount of compensation he or she has received from a capital defendant or any third party.

(b) Recoupment of Fees Generally

To the extent required by law, capital defendants for whom counsel has been appointed 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, the value of services rendered by counsel. After the IDS Director sets the fee to be paid or the value of services rendered, the IDS Director shall notify the defendant of the potential liability, and afford the defendant a reasonable opportunity to be heard on the issue. The trial judge or other appropriate judicial official shall then determine the amount to be recouped if recoupment is required by law.

(c) Recoupment for Contract Services

For legal representation rendered by attorneys working under contract with the IDS Office, the value of services, and the procedures for entry of any appropriate orders or

judgments, shall be determined in accordance with the terms of the contract if recoupment is required by law.

(d) Outside Compensation 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 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.

[Subsection (a) amended effective May 6, 2005, August 13, 2007, and May 29, 2015]
[Subsection (b) amended effective March 7, 2008]
[New subsection (d) adopted effective November 12, 2004. Subsection (d) amended effective September 15, 2006]

Authority: G.S. 7A-450.1 through -450.4; G.S. 7A-452(b); 7A-455; 7A-458; 7A-498.1(4), (5); 7A-498.3(c), (d); 7A-498.5(c)(8), (f)

Commentary

Subsection (a): Counsel should continue to use a revised version of the capital case fee application that has been used by the AOC (AOC-CR-425) to document fee and expense applications. Subsection (a) was amended May 6, 2005 to clarify that attorneys can not double-bill the state for time spent working on multiple cases simultaneously. For all cases finally disposed at the trial level on or after July 1, 2005, the subsection was also amended to require attorneys to submit fee applications to the IDS Director 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. Finally, the subsection was amended to provide that an attorney who was retained to represent a capital defendant can not seek additional compensation from the state.

Subsection (b): In capital cases, recoupment of the cost of court-appointed counsel 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. Since Rule 2A.4(a) authorizes the IDS Director to set fees for counsel and supporting services, this rule requires the IDS Director to notify the defendant of the potential liability and afford the defendant a reasonable opportunity to be heard on the issue, before the trial judge can set the amount of any judgment. The subsection was amended effective March 7, 2008 to clarify that judgments for attorney fees can be ordered by the trial judge or another appropriate judicial official. The Public Defender is obligated to inform the IDS Director of the value of legal services rendered to the defendant. The form judgment is a revised version of the form that has been used by the AOC (AOC-CR-425).

Subsection (d): Subsection (d) 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 September 19, 2008 to clarify that, if family or friends of an indigent client hire an attorney to represent the client, the appointed attorney shall file a motion to withdraw from the representation. 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. 7A-450(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*.

2A.5 Conditions of Appointment

(a) Requirements

The IDS Director may set additional conditions of appointment, including requiring attorneys appointed under this subpart to:

(i) consult with the IDS Director or his or her designee at regular intervals during the pendency of the representation, as required by the IDS Director;

(ii) attend training and/or continuing legal education in the area of capital trial representation as directed by the IDS Director;

(iii) follow the procedures required in Part 2D of these rules concerning appointment and compensation of experts, and other expenses of representation; and

(iv) meet with the IDS Director following a verdict in the case and prior to final payment of counsel fees to review the course of the representation.

(b) Substitution of Counsel

For good cause, the IDS Director may request *ex parte* that a judge of a court of competent jurisdiction replace lead or associate counsel previously appointed with new counsel selected by the IDS Director.

(c) Withdrawal of One Counsel After Non-Capital Declaration

Absent exceptional circumstances and the prior approval of the IDS Director, if second counsel has been appointed to a case pursuant to paragraph 2A.2(d) above, and there is a subsequent declaration that the case will be prosecuted non-capitally, one of the appointed lawyers shall move to withdraw. Counsel shall consult with the IDS Director or his or her designee prior to deciding which assigned counsel will so move, and shall notify the IDS Director or his or her designee of the court's ruling on the motion to withdraw.

If counsel seeks to have both appointed counsel remain on a case after being declared non-capital and the IDS Director determines that exceptional circumstances do not exist and disapproves that request, timely written notice of disapproval will be delivered to counsel. The IDS Director will maintain the notice of disapproval in a confidential file open only to the IDS Office and the defense team. If defense counsel applies to a court for permission to have both appointed counsel remain on a non-capital case following the IDS Director's disapproval, counsel shall submit with its application to the court a complete copy of the IDS Director's written notice of disapproval. Counsel must immediately forward to the IDS Director a complete copy of any court order allowing both attorneys to remain on a case after being declared non-capital and a complete copy of the application made to the court. Such court order and application will be maintained in a confidential file open only to the IDS Office and the defense team.

[New subsection (c) adopted effective March 26, 2010 and amended effective September 25, 2015]

Authority: G.S. 7A-498.1(1), (2); 7A-498.5(a), (c)(4), (c)(7), (h); 7A-498.6(b)(8)

Commentary

Subsection (b): This subsection permits the IDS Director to request *ex parte* that a judge remove an attorney previously appointed. It would be impossible to note all the circumstances that reasonably might cause the IDS Director to make such a request. Such circumstances might not in themselves constitute ineffective assistance of counsel. *See State v. Sweezy,* 291 N.C. 366, 371-72, 230 S.E.2d 524 (1976); *see also State v. Kuplin*, 316 N.C. 387, 396, 343 S.E.2d 793 (1986) ("Each case must be examined on an individual basis. In the absence of a constitutional violation, the decision about whether appointed counsel shall be replaced is a matter solely for the discretion of the trial court."). Reasonable tactical disagreements between the IDS Director and appointed counsel will not constitute grounds for the IDS Director to request substitution of counsel. If the judge determines that the attorney is rendering ineffective assistance of counsel or that the attorney has an impermissible conflict of interest, substitution is required as a matter of law. *See State v. Moorman*, 320 N.C. 387, 358 S.E.2d 502 (1987); *State v. James*, 111 N.C. App. 785, 433 S.E.2d 755 (1993).

Subsection (c): This subsection was adopted effective March 26, 2010 to clarify that, if two attorneys have been appointed to represent a capital defendant and the case is subsequently declared non-capital, one of the attorneys must move to withdraw, unless there are exceptional circumstances and the IDS Director has given prior approval for both attorneys to continue the representation. If a case is declared non-capital within 30 days of a scheduled trial date and the two appointed attorneys have divided the associated work and responsibility, the IDS Director generally will approve both attorneys continuing the representation at the trial. This commentary was amended effective September 25, 2015 to clarify that, if a case is declared non-capital more than 30 days before a scheduled trial date and the two appointed attorneys have divided the associated work and responsibility, the IDS Director may approve both attorneys continuing the representation at the trial after consideration of a number of factors, including but not limited to the nature of the case, the complexity of the legal or factual issues involved, how the work has been divided between the two attorneys, and how much time remains before trial. The subsection was amended effective September 25, 2015 to outline the process for counsel to seek permission from a court to have two appointed attorneys remain on a non-capital case after the IDS Director has denied that request.

Part 2B
Appointment and Compensation of Appellate Counsel in Capital Cases

2B.1 Coverage of this Subpart

(a) Applies to Capital Appeals

This subpart applies to capital appeals and all appeals from offenses joined with a capital appeal. The term "capital appeal" includes appeals of right taken from a sentence of death and petitions for writ of certiorari or other extraordinary writs that are 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.

(b) Authority to Implement Other Programs, Plans, and Contracts

Nothing in these rules shall prohibit assignment of otherwise qualified counsel to represent indigent defendants in capital appeals 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.

[Subsection (a) amended effective February 27, 2009]

Authority: G.S. 7A-498.2(b); 7A-498.3(a); 7A-498.5(c)(7), (c)(8), (d)

2B.2 Appointment of Appellate Counsel

(a) Provisional Appointment of the Office of Appellate Defender

In extraordinary circumstances and in the absence of a court appointment pursuant to paragraph 2B.2(b) below, the Appellate Defender may appoint the Office of the Appellate Defender on a provisional basis to make a preliminary determination of the defendant's entitlement to appointed counsel in the Appellate Division, and to file a petition for an appropriate extraordinary writ in the Appellate Division.

(a1) Appointment of the Office of Appellate Defender by the Court for Litigation of Extraordinary Writ in Appellate Division Prior to Entry of Final Judgment in Trial Division

The trial court may appoint the Office of Appellate Defender to represent a defendant charged with a capital offense for the purpose of preparing, filing, and litigating a petition for writ of certiorari or other extraordinary writ in the Appellate Division prior to final entry of judgment in the Trial Division. If appointed for this purpose, the Office of Appellate Defender or counsel appointed by the Appellate Defender pursuant to paragraph 2B.2(c), below, shall file the petition only if it will present a potentially meritorious issue for review.

(b) Appointment of the Office of Appellate Defender by the Court for Appeals of Right

Following entry of a judgment imposing a death sentence, the IDS Director shall appoint the Office of Appellate Defender as appellate counsel in the capital case, and in any joined non-capital case upon which the court enters judgment, if the court determines that the capital defendant is indigent. It shall not be necessary for the IDS Director to file an order appointing the Office of Appellate Defender. The appellate entries made by the court following entry of a death judgment against an indigent defendant shall reflect that appeal is taken by operation of law pursuant to G.S. 15A-2000(d)(1), and that the IDS Director has appointed the Office of Appellate Defender. The appellate entries shall be mailed or transmitted by facsimile to the Office of Appellate Defender as soon as practicable following entry of judgment.

(c) Representation by Appellate Defender; Assignment of Other Appellate Counsel

The Appellate Defender shall represent on appeal as many of the defendants with capital appeals as possible to maximize the effectiveness of the Office of Appellate Defender, consistent with the other goals and responsibilities of that office. For the defendants that the Office of Appellate Defender does not represent on appeal, the Appellate Defender shall appoint one or two lawyers to represent the defendant on appeal. The Appellate Defender shall maintain a list of lawyers eligible to represent capital defendants on appeal pursuant to the procedures in Appendix 2B to these rules. The Appellate Defender shall appoint from that list pursuant to rules approved by the IDS Director. Appointment orders, signed by the Appellate Defender, shall be distributed to the appellant, trial judge, prosecuting attorney, defense attorneys at trial, clerk of superior court for the county where the trial took place, and court reporter(s).

(d) Conflicts

If the Office of Appellate Defender is appointed to represent a capital defendant whose case would create a conflict of interest with a current or previous client of the Office of Appellate Defender, the Appellate Defender shall immediately notify the IDS Director, and the IDS Director shall appoint counsel in the new case pursuant to the rules under which the Appellate Defender would appoint counsel. If the Appellate Defender is appointed to represent co-appellants, the Appellate Defender may appoint the Office of the Appellate Defender to represent a co-appellant and may appoint counsel for the remaining co-appellants so long as the Appellate Defender previously has not undertaken representation of a co-appellant.

(e)Evidentiary Hearings on Remand from the Appellate Courts Pending Direct Appeal and Assignment of Counsel by the Appellate Defender

After consulting with appointed appellate counsel, the Appellate Defender or IDS Director may appoint one or two additional lawyers to represent the appellant at an evidentiary hearing in the Trial Division on remand from the Appellate Division when the direct appeal is still pending. If additional counsel is appointed for that purpose, that counsel must be on the roster of attorneys who are approved to represent indigent capital

defendants in the Trial Division pursuant to Rule 2A.2(d)(App.). Compensation of counsel appointed under this subsection shall be governed by Rule 2B.3. Appointment and compensation of experts and payment of other expenses related to litigation at the evidentiary hearing as authorized under this subsection shall be governed by Part 2D of these rules.

[New subsection (a) adopted effective July 9, 2004]
[New subsection (a1) adopted effective February 27, 2009]
[Subsection (b) amended effective February 27, 2009]
[Subsection (c) amended effective November 4, 2005]
[Subsection (d) amended effective January 18, 2002]
[New subsection (e) adopted effective November 4, 2005]

Authority: G.S. 7A-450(b); 7A-452(a); 7A-498.3(b), (c); 7A-498.5(d), (h); 7A-498.8(b)(1), (b)(6)

Commentary

The superior court shall continue to use a revised version of the appellate entries form that has been used by the AOC (AOC-CR-350) to appoint the Office of Appellate Defender to represent the defendant in a capital appeal. The form will memorialize the automatic appeal of the conviction and sentence pursuant to G.S. 15A-2000(d)(1), the defendant's indigency status, the appointment of the Office of Appellate Defender by operation of these rules, and other relevant information common to all appeals of right from criminal convictions in superior court.

Subsection (a): This provision was added in July 2004 to authorize the Appellate Defender to provisionally appoint the Office of the Appellate Defender in certain circumstances. The need for this authority has typically arisen in three types of cases: 1) cases in which the Appellate Defender believes that a trial court has erroneously denied indigency status after a person who the court previously determined was indigent entered notice of appeal, and that a petition for an extraordinary writ should be filed on the person's behalf; 2) cases in which a trial court has determined that a person is indigent but denied appointed appellate counsel, and the Appellate Defender believes that the person has a right to appointed appellate counsel and that a petition for an extraordinary writ should be filed on the person's behalf; and 3) cases in which the Appellate Defender is contacted by appointed trial counsel concerning the need for immediate review of a pre-trial ruling, and the Appellate Defender agrees that the ruling should be challenged in the appellate courts by means of a petition for an extraordinary writ.

Subsection (a1): Subsection (a1) was adopted effective February 27, 2009 to clarify that the trial court may appoint the Office of Appellate Defender for litigating an extraordinary writ in the Appellate Division prior to the entry of a final judgment in the Trial Division on behalf of a defendant charged with a capital offense.

Subsection (b): This subsection was amended effective February 27, 2009 to clarify that it governs direct appeals of right in capital cases.

Subsection (e): This provision was added in November 2005 to authorize the Appellate Defender or IDS Director to appoint counsel to litigate an evidentiary hearing in the Trial Division on remand from the Appellate Division when the direct appeal is still pending.

2B.3 Compensation and Recoupment

(a) Compensation

Appointed counsel who represented an indigent capital defendant on appeal shall submit to the IDS Director an itemized fee application on a form prescribed by the IDS Director, showing the time counsel spent in appellate representation of the defendant. If

an attorney seeks compensation for time spent working on multiple cases simultaneously, the attorney's time shall be prorated among each of the cases involved. Following review of the fee application, the IDS Director shall determine the amount of compensation and forward the award to IDS Financial Services for payment. If counsel is required pursuant to paragraph 2B.4(b)(iii) below to meet with the Appellate Defender or others to review the representation, the fee shall include compensation for time spent in that review. Private counsel appointed to represent an indigent capital defendant may apply for and receive interim payments in the discretion of the IDS Director. For all cases finally disposed at the appellate level on or after July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the Appellate Defender or IDS Director within no more than one year after the date on which the appeal was finally disposed. For all cases finally disposed at the appellate level before July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the Appellate Defender or IDS Director 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. Counsel may make a written request for a review of the amount of compensation determined by the IDS Director from a committee of the IDS Commission designated by the IDS Commission to conduct such review.

(b) Recoupment of Fees Generally

To the extent required by law, capital defendants for whom counsel has been appointed 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 or appellate defender office, the value of services rendered by counsel. After the IDS Director sets the fee to be paid or the value of services rendered, the IDS Director shall notify the defendant of the potential liability, and afford the defendant a reasonable opportunity to be heard on the issue. The trial judge or other appropriate judicial official shall then determine the amount to be recouped if recoupment is required by law.

(c) Recoupment for Contract Services

For legal representation rendered by attorneys working under contract with the IDS Office, the value of services, and the procedures for entry of any appropriate orders or judgments, shall be determined in accordance with the terms of the contract if recoupment is required by law.

(d) Outside Compensation 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 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.

[Subsection (a) amended effective May 6, 2005, August 13, 2007, and May 29, 2015]
[Subsection (b) amended effective March 7, 2008]

[New subsection (d) adopted effective November 12, 2004. Subsection (d) amended effective September 15, 2006]

Authority: G.S. 7A-450.1 through -450.4; 7A-452(b); 7A-455; 7A-458; 7A-498.1(4), (5); 7A-498.3(c), (d); 7A-498.5(c)(8), (f)

Commentary

See the commentary to Rule 2A.4, above.

2B.4 Conditions of Appointment

(a) Petitions for Certiorari, Oppositions to Petitions for Certiorari, and Representation in the Supreme Court of the United States

If the defendant does not receive sentencing relief in the Supreme Court of North Carolina, the appointed appellate lawyer shall prepare and file in the Supreme Court of the United States a timely petition for writ of certiorari to the Supreme Court of North Carolina, unless relieved of this responsibility by the IDS Director or Appellate Defender. If the defendant receives sentencing relief in the Supreme Court of North Carolina, but the Supreme Court of the United States arguably has certiorari jurisdiction on an issue that could result in guilt-phase relief, the appointed appellate lawyer will be compensated for preparing and filing in the Supreme Court of the United States a timely petition for writ of certiorari to the Supreme Court of North Carolina only if the lawyer obtains prior written authorization from the IDS Director or Appellate Defender. If the defendant receives relief in the Supreme Court of North Carolina and the state files a petition for writ of certiorari, the appointed appellate lawyer shall prepare and file a timely response in opposition to the petition, unless relieved of this responsibility by the IDS Director or Appellate Defender. If the Supreme Court of the United States grants certiorari, the appointed appellate lawyer shall represent the defendant in proceedings before the Supreme Court, unless relieved of this responsibility by the IDS Director or Appellate Defender.

If the IDS Director or Appellate Defender relieves the appointed appellate lawyer of any of these responsibilities or declines to authorize appointed appellate counsel to file a writ of certiorari on an issue that could result in guilt-phase relief, the Appellate Defender may undertake the representation directly or appoint one or two other qualified appellate attorneys from the list of lawyers eligible to represent capital defendants on appeal. The Appellate Defender also may appoint the Office of Appellate Defender or another qualified appellate attorney from the list of lawyers eligible to represent capital defendants on appeal as co-counsel with appointed appellate counsel. Compensation of counsel for work performed pursuant to this subsection shall be governed by Rule 2B.3.

(b) Other Requirements

The IDS Director or Appellate Defender may set additional conditions of appointment, including requiring attorneys appointed under this subpart to:

(i) consult with the Appellate Defender or his or her designee during the pendency of the representation in the Appellate Division or in the Supreme Court of the United States as provided by paragraph 2B.4(a), above, participate in practice oral arguments, and submit briefs for pre-filing review, as required by the Appellate Defender;

(ii) attend training and/or continuing legal education in the area of capital appellate representation as approved by the IDS Director; and

(iii) meet with the Appellate Defender and any others designated by the IDS Director following an appellate decision and prior to final payment of counsel fees to review the course of the representation.

(c) Substitution of Counsel

For good cause, the IDS Director may request *ex parte* that a court of competent jurisdiction replace an appellate attorney previously appointed with new counsel selected by the IDS Director.

[Subsection (a) amended effective September 14, 2007]
[Subsection (b) amended effective September 14, 2007]

Authority: G.S. 7A-451(b)(7), 7A-498.1(1), (2); 7A-498.5(a), (c)(4), (c)(7), (h); 7A-498.6(b)(8); 7A-498.8(b)(3), (b)(4), (b)(6a)

Commentary

Subsection (a): Subsection (a) was amended effective September 14, 2007 to address defense petitions for certiorari in the Supreme Court of the United States on issues that could lead to guilt-phase relief, oppositions to state petitions for certiorari, and the responsibility for representation in the Supreme Court of the United States if that Court grants certiorari review. The amendments reflect statutory revisions that were enacted during the 2007 legislative session, which extended the entitlement to counsel to "review of any judgment or decree rendered on direct appeal by the Supreme Court of North Carolina pursuant to the certiorari jurisdiction of the United States Supreme Court." S.L. 2007-323, § 14.19(a).

Subsection (b): Based on the same statutory revisions described in the commentary to subsection 2B.4(a), above, this subsection was amended effective September 14, 2007 to clarify that the Appellate Defender may set additional conditions of appointment for representation in the Supreme Court of the United States, including requiring consultations, reviews of draft petitions and briefs, and practice oral arguments.

Subsection (c): See the commentary to Rule 2A.5(b), above.

Part 2C
Appointment of Post-Conviction Counsel in Capital Cases

2C.1 Coverage of this Part

(a) Applies to Capital Post-Conviction

This subpart applies to capital defendants whose death sentences are on direct appeal to the Supreme Court of North Carolina or have been affirmed on direct appeal by the Supreme Court of North Carolina.

(b) Authority to Implement Other Programs, Plans, and Contracts

Nothing in these rules shall prohibit assignment of otherwise qualified counsel to represent indigent defendants in capital post-conviction proceedings 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.

Authority: G.S. 7A-451(c), (d); 7A-498.2(b); 7A-498.3(a); 7A-498.5(c)(7), (c)(8), (d)

2C.2 Appointment of Post-Conviction Counsel and Scope of Representation

(a) Appointment of Counsel

The IDS Director shall appoint two lawyers as post-conviction counsel in each indigent capital post-conviction case in accordance with G.S. 7A-451(c). The IDS Director shall maintain a list of lawyers eligible to represent capital defendants in post-conviction proceedings pursuant to the procedures in Appendix 2C of these rules. Appointment orders, signed by the IDS Director, shall be distributed to the defendant, clerk of superior court for the county where the trial took place, district attorney, attorney general, and lawyers appointed as post-conviction counsel.

(b) Scope of Representation

If a Motion for Appropriate Relief is denied by the superior court, appointed capital post-conviction counsel are authorized to prepare, file, and litigate a petition for writ of certiorari in the Supreme Court of North Carolina. Counsel are also authorized to prepare, file, and litigate a petition for writ of certiorari or other extraordinary writ seeking review of an interlocutory ruling of the superior court. If a petition for writ of certiorari is denied by the Supreme Court of North Carolina or if that court grants certiorari review but denies relief, counsel who seek to be compensated for preparing, filing, or litigating a petition for writ of certiorari in the Supreme Court of the United States must obtain prior authorization from the Appellate Defender.

Absent exceptional circumstances and the prior approval of the IDS Director, if the superior court vacates a death sentence and resentences a defendant to life imprisonment without the possibility of parole, but there is one or more guilt-phase claims in a pending

Motion for Appropriate Relief, one of the appointed lawyers shall move to withdraw. Counsel shall consult with the IDS Director or his or her designee about the pending guilt-phase claims prior to deciding which assigned counsel will so move, and shall notify the IDS Director or his or her designee of the court's ruling on the motion to withdraw. Subject to policies and procedures adopted by the IDS Office, the remaining appointed lawyer shall continue the litigation of the pending guilt-phase claims until they are finally resolved in the Trial Division. If the guilt-phase claims are ultimately denied, subject to policies and procedures adopted by the IDS Office, the remaining appointed lawyer may also prepare, file, and litigate a petition for writ of certiorari in the Appellate Division. If a petition for writ of certiorari is denied by the Appellate Division or if that Division grants certiorari review but denies relief, counsel who seek to be compensated for preparing, filing, or litigating a petition for writ of certiorari in the Supreme Court of the United States must obtain prior authorization from the Appellate Defender.

[Section amended effective February 27, 2009 and September 24, 2010]

Authority: G.S. 7A-450(b); 7A-451(c), (d); 7A-498.3(b), (c); 7A-498.5(d), (h)

Commentary

Subsection (a): Pursuant to G.S. 7A-451(c), an indigent capital defendant may apply to the IDS Office for appointment of post-conviction counsel. If the defendant was previously adjudicated indigent for purposes of trial or direct appeal, the defendant shall be presumed indigent and the IDS Office shall appoint two counsel to represent the defendant in post-conviction proceedings. If the defendant was not previously adjudicated indigent, the IDS Office shall request that the superior court of the district in which the defendant was indicted determine whether the defendant is indigent. In such cases, if the court finds that the defendant is indigent and desires counsel, it shall appoint the IDS Office, which shall in turn appoint two counsel to represent the defendant. The IDS Director will approve and make available a form to facilitate the court's appointment of the IDS Office (AOC-CR-427). The court can notify the IDS Director that it has appointed the IDS Office by mail, facsimile, or email.

Subsection (b): This subsection was amended effective February 27, 2009 to clarify the scope of appointed capital post-conviction counsel's representation and to provide a mechanism for seeking advance approval to litigate a certiorari petition in the Supreme Court of the United States. The subsection was amended again effective September 24, 2010 to address the procedure if a judge vacates a defendant's death sentence but does not issue a final ruling on one or more guilt-phase claims in a pending Motion for Appropriate Relief. Under those circumstances, this provision would allow one of the previously appointed post-conviction counsel to continue the representation.

2C.3 Compensation and Recoupment

(a) Compensation

Appointed counsel who represented an indigent capital defendant in post-conviction proceedings shall submit to the IDS Director at least annually an itemized fee application on a form prescribed by the IDS Director, showing the time counsel spent in post-conviction representation of the defendant. If an attorney seeks compensation for time spent working on multiple cases simultaneously, the attorney's time shall be prorated among each of the cases involved. Following review of the fee application, the IDS Director shall determine the amount of compensation and forward the award to IDS Financial Services for payment. If counsel is required pursuant to paragraph 2C.4(a)(iv) below to meet with the

IDS Director to review the representation, the fee shall include compensation for time spent in that review. Private counsel appointed to represent a capital defendant on post-conviction may apply for and receive interim payments in the discretion of the IDS Director. For all cases finally disposed at the post-conviction level on or after July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the IDS Director within no more than one year after the date on which the post-conviction proceedings were finally disposed. For all cases finally disposed at the post-conviction level before July 1, 2005, final attorney fee applications must be signed by the appointed attorney and submitted to the IDS Director 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. Counsel may make a written request for a review of the amount of compensation determined by the IDS Director from a committee of the IDS Commission designated by the IDS Commission to conduct such review.

(b) Recoupment of Fees Generally

To the extent required by law, capital defendants for whom counsel has been appointed 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 or appellate defender office, the value of services rendered by counsel. After the IDS Director sets the fee to be paid or the value of services rendered, the IDS Director shall notify the defendant of the potential liability, and afford the defendant a reasonable opportunity to be heard on the issue. The trial judge or other appropriate judicial official shall then determine the amount to be recouped if recoupment is required by law.

(c) Recoupment for Contract Services

For legal representation rendered by attorneys working under contract with the IDS Office, the value of services, and the procedures for entry of any appropriate orders or judgments, shall be determined in accordance with the terms of the contract if recoupment is required by law.

(d) Outside Compensation 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 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.

[Subsection (a) amended effective May 6, 2005, August 13, 2007, and May 29, 2015]
[Subsection (b) amended effective March 7, 2008]
[New subsection (d) adopted effective November 12, 2004. Subsection (d) amended effective September 15, 2006]

Authority: G.S. 7A-450.1 through -450.4; 7A-452(b); 7A-455; 7A-458; 7A-498.1(4), (5); 7A-498.3(c), (d); 7A-498.5(c)(8), (f)

Commentary

See the commentary to Rule 2A.4, above.

2C.4 Conditions of Appointment

(a) Requirements

The IDS Director may set additional conditions of appointment, including requiring attorneys appointed under this subpart to:

(i) consult with the IDS Director during the pendency of the representation and submit the Motion for Appropriate Relief or other filings for pre-filing review, as required by the IDS Director;

(ii) attend training and/or continuing legal education in the area of capital post-conviction representation as approved by the IDS Director;

(iii) follow the procedures required in Part 2D of these rules concerning appointment and compensation of experts, and other expenses of representation; and

(iv) meet with the IDS Director following the end of the representation and prior to final payment of counsel fees to review the course of the representation.

(b) Substitution of Counsel

For good cause, the IDS Director may request *ex parte* that a judge of a court of competent jurisdiction replace post-conviction counsel previously appointed with new counsel selected by the IDS Director.

Authority: G.S. 7A-498.1(1), (2); 7A-498.5(a), (c)(4), (c)(7), (h); 7A-498.6(b)(8)

Commentary

See the commentary to Rule 2A.5(b), above.

Part 2D
Appointment and Compensation of Experts and Payment of Other Expenses Related to Legal Representation in Capital Cases

2D.1 Initial Application

Defense counsel shall make application to the IDS Director for authorization to retain experts or for other substantial expenses necessary to the defense of the capital defendant before applying to a court for such authorization, and before incurring a financial obligation for which defense counsel will apply to the IDS Director for payment by the IDS Office. The application shall be in writing, unless exceptional or extraordinary circumstances necessitate an oral motion. Defense counsel will be required to make at least as specific an application to retain experts as would be required by a fair but exacting trial judge applying G.S. 7A-450(a) and *Ake v. Oklahoma* and its progeny. The IDS Director may require counsel to make a more particularized application before approving or disapproving the application.

Authority: G.S. 7A-450(b); 7A-454; 7A-498.1(1); 7A-498.3(a), (c), (d); 7A-498.5(c)(6), (f)

Commentary

Routine expenses, such as typical long-distance telephone calls, are not substantial expenses within the meaning of this rule. Counsel can resolve any question about whether an expense requires prior approval of the IDS Director by communication with the IDS Director by telephone or email.

Ordinarily, counsel should submit to the IDS Director a written application for expert funding. However, in exceptional or extraordinary circumstances, counsel may apply for expert funding by telephone or email.

2D.2 Confidentiality of Application

The IDS Director will maintain the application in a confidential file open only to the IDS Office and the defense team.

Authority: G.S. 7A-498.3(a), (c); 7A-498.5(c)(6), (f)

2D.3 Disapproval of Application

If the IDS Director disapproves the application, timely written notice of disapproval of the application will be delivered to counsel. The IDS Director will maintain the notice of disapproval in a confidential file open only to the IDS Office and the defense team.

Authority: G.S. 7A-498.3(a), (c), (d); 7A-498.5(c)(6), (f)

2D.4 Application to Court

Defense counsel may apply to a court for appointment of experts or for other expenses following disapproval by the IDS Director but before incurring a financial obligation for which defense counsel will apply for payment by the IDS Office. However, in no event may counsel apply to a court for a deviation from the standardized expert hourly rates following disapproval of a requested deviation by the IDS Director. If counsel applies to a court for appointment of experts or for other expenses, counsel may not submit an application to a court that includes information not contained in the application made to the IDS Director unless exceptional or extraordinary circumstances necessitate submitting such new or additional information directly to a court. If counsel makes application to a court following the IDS Director's disapproval, counsel shall notify the IDS Director in advance so that the IDS Director may take appropriate steps to ensure that all relevant information is before the court. Counsel shall also submit with its application to the court a complete copy of the IDS Director's written notice of disapproval and a complete copy of the written application made to the IDS Director. Counsel must immediately forward to the IDS Director a complete copy of any court order approving funds previously disapproved by the IDS Director and a complete copy of the application made to the court. Such court order and application will be maintained in a confidential file open only to the IDS Office and the defense team.

[Section amended effective December 9, 2011 and September 25, 2015]

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

Commentary

If, after denial of an initial application to the IDS Director for appointment or compensation of experts or other supporting services, defense counsel discovers new or additional information that is relevant to such application, counsel ordinarily should submit a new application to the IDS Director before submitting an application to a court. Counsel may submit to a court an application that contains new or additional information only in exceptional or extraordinary circumstances. This section was amended December 9, 2011 to clarify that counsel may not seek judicial review of the IDS Director's decision to deny a deviation from the standardized expert hourly rates set by the IDS Commission pursuant to G.S. 7A-498.5(f). This section was amended September 25, 2015 to clarify that any application to a court for funding for experts or other expenses following the IDS Director's disapproval must be submitted before incurring a financial obligation. It was also amended to require counsel to notify the IDS Director in advance of any application to a court so that the IDS Director may take appropriate steps to ensure that the court has access to all relevant information.

2D.5 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.

Authority: G.S. 7A-454; 7A-498.1(1), (3); 7A-498.3(a), (c); 7A-498.5(c)(6), (d), (f)