

## CONDITIONS OF PAYMENT FOR INDIGENT APPELLATE REPRESENTATION

### IDS Policy:

No application for payment from IDS funds for representation of an indigent person in the appellate division shall be processed unless counsel first complies with the following requirements and procedures:

1. Roster Membership: Counsel must be approved for the appropriate roster of appellate counsel maintained by the Appellate Defender, Parent Representation Coordinator, or IDS Director.
2. Appointment by IDS: Counsel must be appointed by the Appellate Defender, Parent Representation Coordinator, or IDS Director to represent the indigent person. Counsel will not be compensated for representing an indigent person who is not entitled to appointed appellate counsel, or for appellate representation when the appointment is made by a judge of the trial division in violation of the IDS Rules.
3. Submissions to the Appropriate Brief Bank: Appointed appellate counsel shall submit all initial appellate briefs (not reply briefs or petitions for certiorari), whether filed in the Court of Appeals or the Supreme Court, to the Office of the Appellate Defender or Parent Representation Coordinator for possible inclusion in the IDS online brief bank. Briefs in criminal and delinquency appeals shall be submitted via electronic mail to [briefbank@nccourts.org](mailto:briefbank@nccourts.org). Briefs in Chapter 7B civil appeals, child support contempt appeals, and guardianship appeals shall be submitted via electronic mail to [7bbriefbank@nccourts.org](mailto:7bbriefbank@nccourts.org). Briefs must be submitted in a commonly used word processing format such as Word or WordPerfect. Briefs must be submitted the same day they are filed in the appellate court.
4. Transmission of Transcript to the Office of the Appellate Defender: Appointed appellate counsel must provide an electronic copy of the complete transcript of the proceedings in the trial division to the Office of the Appellate Defender in any of the following circumstances:
  - a. When an expert witness, including SBI forensic analysts or analysts employed by other forensic laboratories, testified, either on voir dire or before the fact finder. This does not include law enforcement officers testifying exclusively as fact witnesses.
  - b. When the case was tried capitally.
  - c. When jury selection or closing arguments of counsel were recorded.
  - d. When the proceeding was an adjudication hearing in a Chapter 7B abuse, neglect, or dependency proceeding.

If the trial division proceeding does not meet one of these criteria, but appellate counsel believes that archiving the transcript may be useful in future litigation or for pedagogical purposes, counsel may submit the transcript with an explanation of its particular worth.

All .pdf files of the transcript provided by the court reporter must be emailed to [OADtpp@nccourts.org](mailto:OADtpp@nccourts.org). When the transcript is required to be submitted because an

expert witness testified, appellate counsel must also complete the form “Expert Testimony Categories for Transcript Submission by Appellate Counsel,” which is available on the IDS website under “Information for Counsel,” then “Policies & Procedures,” and then “Appeals.”

5. Posting of Briefed Issues on the Appropriate Listserv: Appointed appellate counsel shall post a concise description of briefed issues to the appropriate listserv when the original brief is filed in the appellate court. The posting shall include the county of origin and the appellate docket number for the case. The posting must be made the same day the brief is filed in the appellate court.
6. Dismissed or Withdrawn Appeals: If an appellate court dismisses an appeal or if the client withdraws the appeal, appointed appellate counsel shall submit with his or her fee application a brief description of the circumstances surrounding the dismissal or withdrawal. This requirement does not apply to appeals to the Supreme Court of North Carolina from a decision of the North Carolina Court of Appeals asserting as grounds for appellate review that the appeal presents a substantial constitutional question.
7. Payment Checklist in Criminal and Non-Criminal Appeals: Appointed appellate counsel shall attach to every fee application in a criminal and non-criminal appeal the checklist that is posted on the IDS website entitled “Checklist for Submission of Appellate Fee Applications.” Fee applications that are submitted without the checklist shall be returned to counsel unpaid.

Original policies effective October 2003, March 2005, and January 2007. Policies updated March 2010, December 2010, August 1, 2012, October 1, 2013, February 6, 2014, and October 27, 2014.

Authority:

G.S. 7A-498.3, 7A-498.8; IDS Rules 2B.2, 2B.3(a), 3.2, 3.3, 3.4(f).