

**APPELLATE COUNSEL’S DUTY TO MONITOR APPOINTMENT OF TRIAL COUNSEL
AFTER RELIEF IS GRANTED ON APPEAL**

IDS Policy:

When an appellate court grants relief for a person represented by appointed appellate counsel and that relief includes a remand to the trial court for retrial, resentencing, or other proceedings, it is the duty of appointed appellate counsel to monitor the status of the case in the trial division as a safeguard against unnecessary delay in appointment of trial counsel. This duty is particularly significant if the client is incarcerated or confined.

After the relief ordered by the last appellate court to consider the case on the merits is final, appointed appellate counsel shall mail a letter to the appropriate senior resident superior court judge or chief district court judge informing the judge of the relief granted by the appellate court and requesting that the case be calendared or scheduled for appointment of trial counsel. The letter shall be copied to the clerk of court, the elected district attorney, the prosecutor in the original trial division proceedings, the attorney who represented the defendant in the original trial division proceedings, the public defender for the district if there is one, and the client. Appellate counsel then shall make appropriate periodic inquiries to determine whether trial counsel has been appointed, a request for appointed counsel has been denied, or counsel has been retained by or for the client.

If an incarcerated or confined person is entitled to immediate release from custody as a result of the final decision of an appellate court, appointed appellate counsel shall take appropriate steps to attempt to ensure that the defendant is timely released. When a client’s incarceration becomes illegal, appointed appellate counsel shall inform the appellate defender, who may authorize further investigation or litigation by appointed appellate counsel to gain the client’s release or may assume direct responsibility for further investigation or litigation.

If appointed appellate counsel deems it in the client’s best interest to depart from these procedures, he or she shall consult with the appellate defender before doing so. Upon application, appellate counsel will be compensated for monitoring the appointment of trial counsel. However, compliance with this policy shall not toll the one-year deadline established by IDS Rule 3.3(b). If appellate counsel has filed a final fee application before post-relief appointment of trial counsel has been verified, appellate counsel may file a supplemental fee application documenting the time and expenses involved in monitoring the appointment of trial counsel.

Policy effective September 1, 2010; updated October 23, 2013.

Authority:

G.S. 7A-498.3(c); IDS Rule 3.4(f).