

PAYMENT FOR SATELLITE BASED MONITORING APPEALS

Trial courts impose satellite-based monitoring (“SBM”) either in “bring back” hearings for past convictions or immediately following sentencing in current prosecutions. Most appeals from SMB orders involve high-level felony convictions (Class D and above), but occasionally SBM is imposed following a conviction of a low-level felony or misdemeanor.

IDS Policy:

IDS compensates appellate counsel in SBM appeals following bring-back hearings at the rate applicable to high-level felonies. Given the serious consequences of an SBM order, IDS will compensate appellate counsel at the rate applicable to high-level felonies when an appeal from a conviction of a low-level felony or misdemeanor includes an appeal from an SBM order. In order to identify the low-level felony or misdemeanor appeals in which the higher rate is applicable, appointed appellate counsel must indicate the level of offense and check the “Other” box and write in “SBM” in Section I. of the appellate fee application form (AOC-CR-426).

The higher rate is applicable only if the client appealed the SBM order. The higher rate will also apply if counsel files a petition for writ of certiorari to establish an appeal of right when the notice of appeal from the SBM order was defective, or if the state is appealing the court’s decision not to impose SBM. If there was no appeal from an SBM order, even if monitoring was ordered by the trial court, the lower rate applies. If there is any question about whether the client wants to appeal the SMB order, appellate counsel should communicate with the client to determine whether he or she wants to pursue the appeal and to make him or her aware of the potential financial consequences if the appeal is unsuccessful.

Policy effective March 18, 2014. Policy is not retroactive to interim and final fee applications for which appointed appellate counsel have already been paid.

Authority:

G.S. 7A-498.3; IDS Rule 3.3.