

POWERPOINT SLIDES

ETHICS & PRACTICE: BILLING IN APPOINTED INDIGENT CASES

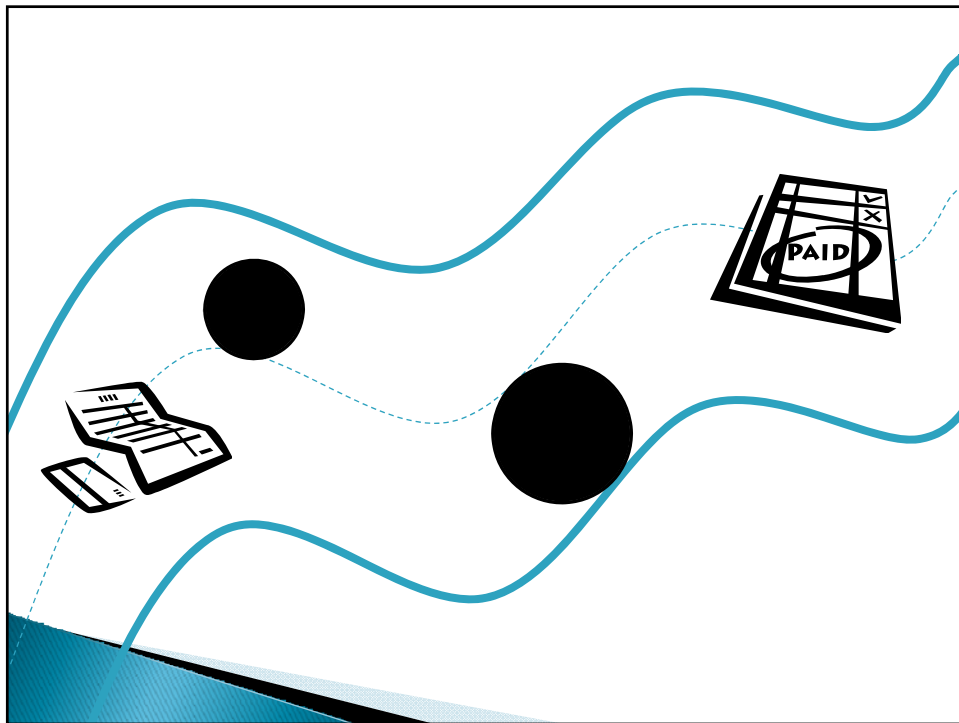
(NON-CAPITAL AND NON-CRIMINAL CASES AT THE TRIAL LEVEL)

*To view the slides for a particular segment of the video,
click on the applicable link*

Video Topic	Description of Session
<i>The Journey of a Fee Application</i>	Outlines the steps involved with the submission, processing, and payment of a fee application
<i>What's Billable</i>	Discusses a series of examples illustrating the fees and expenses that appointed counsel may bill for
<i>Forms</i>	Highlights the key portions of the fee application form and describes how to fill out the forms.
<i>Getting Paid</i>	Reviews the payment options for appointed counsel, including the benefits of e-pay
<i>Record Keeping</i>	Reviews IDS recommendations on maintaining case files and billing records

The Journey of a Fee Application

Elisa Wolper
IDS Chief Financial Officer



What Does a Fee App Do?

- ▶ It is YOUR bill for legal services
- ▶ It is the document that triggers a civil judgment for attorneys fees against the defendant AND replenishes the indigent fund
- ▶ It is a data source for IDS research and audit

Step 1: Get Your Information Ready

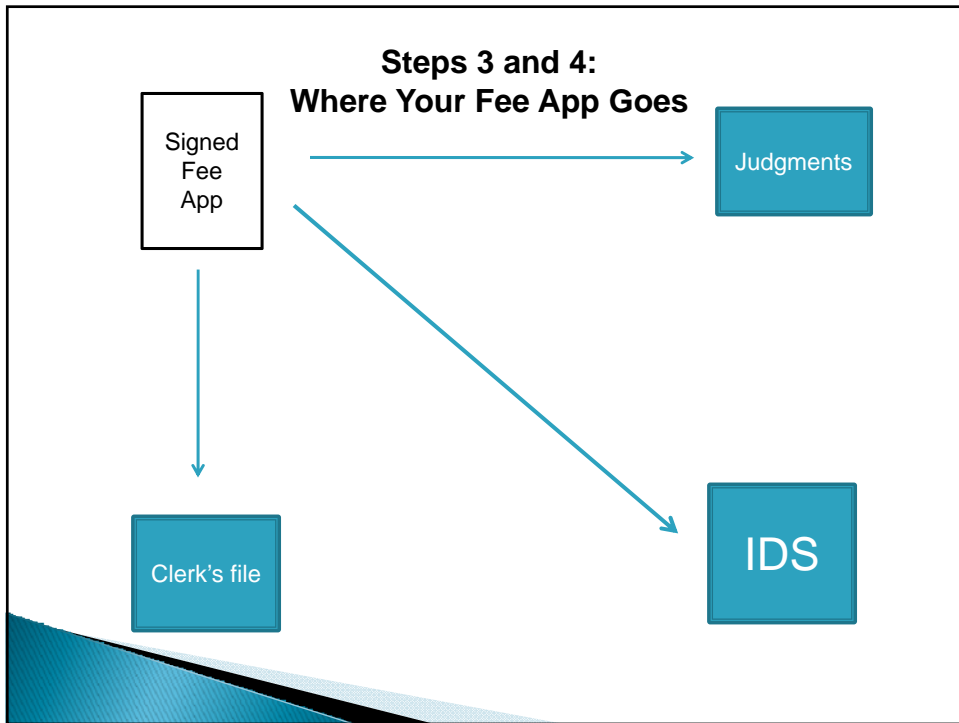
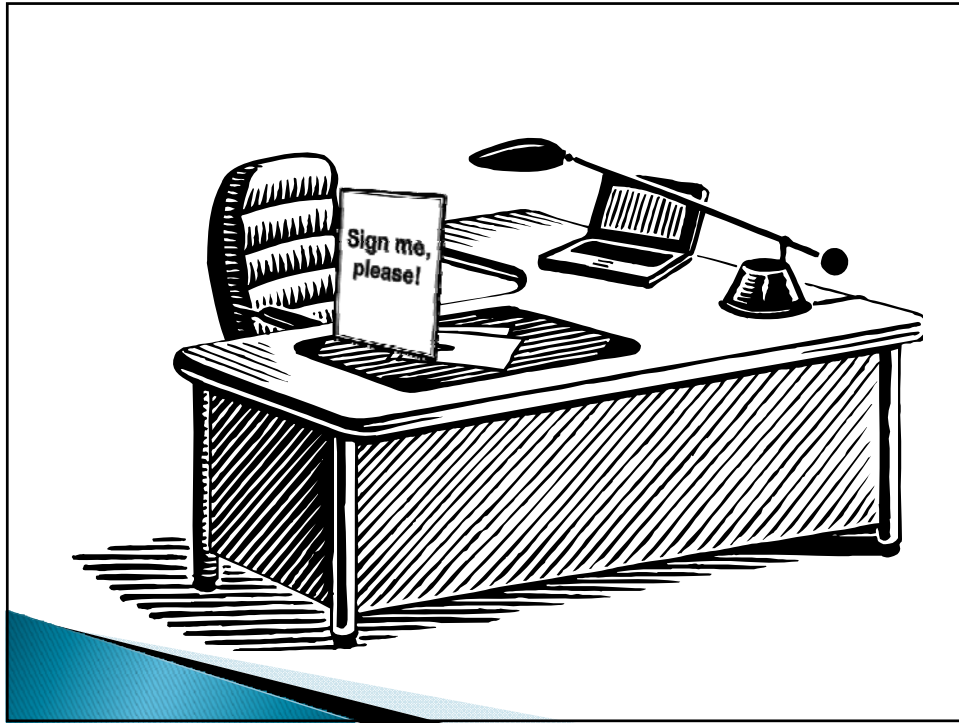


What You'll Need

- ✓ Your hours
- ✓ Your expenses
- ✓ Time period of your work
- ✓ Disposition date of the case
- ✓ Case information
- ✓ The correct form!



Step 2:
Have your
fee app
ready at
the time of
disposition



Step 5: What Happens at IDS



- ▶ Within thirty days of receipt, we will
 - Review
 - Enter
 - PAY!

Step 6: Where is the Information on Your Fee and Work

- ✓ Your records
- ✓ Clerk's file
- ✓ IDS imaging system
- ✓ NCAS (NC accounting system)
- ✓ Check or e-deposit
- ✓ VCAP (civil judgments)

What Can I Bill For?

Prepared by John Rubin
UNC School of Government

Applicability

- ▶ This session is for appointed counsel at the non-capital trial level (criminal or noncriminal) who take appointed cases on a case-by-case basis
- ▶ Not contract counsel or counsel-for-the-day
- ▶ Not capital or appellate counsel

Compensable Work: Question

- ▶ J.R. puts in 8 hours on a case as follows:
 - 5 hours of out-of-court preparation (interviewing client, researching the law, etc.)
 - 2 hours for waiting in court for various proceedings in the case
 - 1 hour for various court proceedings in the case
- ▶ May J.R. bill for all 8 hours and, if so, at what rate?

Compensable Work: Answer

- ▶ J.R. may claim all eight hours at the standard hourly rate.
 - IDS does not distinguish among the categories of work
- ▶ But, J.R. should fill out the fee form to reflect the different categories (out-of-court, in-court, and waiting)
- ▶ Filling out fee app is not compensable

Prorating Time: Question

- ▶ While driving to Asheville from Chapel Hill on a case, J.R. was on his cell phone talking to the prosecutor for 30 minutes about another client's case. On his way home, he talked to a witness for 30 minutes about a third client's case. The round trip took 7.5 hours total
- ▶ What is the total amount of time that J.R. may claim?

Prorating Time: Answer

- ▶ J.R. may claim 7.5 hours for his time in the car, regardless of how many cases he was working on while he was driving.
- ▶ He should charge 6.5 hours to the case on which he was travelling, .5 hours on the case involving the call to the prosecutor, and .5 hours on the case involving the call to the witness, for a total of 7.5 hours.

More Prorating Time: Question

- ▶ On December 1, 2007, J.R. waits in court for two hours for four appointed clients.
- ▶ How should J.R. bill his time?

More Prorating Time: Answer

- ▶ J.R. should bill .5 hours for each client's case, for a total of two hours.

Multiple Charges: Question

- ▶ While J.R. is working on a client's criminal case, the client picks up a second, unrelated criminal charge. J.R. works out a plea to both charges and resolves them in superior court on the same day.
- ▶ J.R. spent two hours on the first case, two more hours on the second case, and two hours working out and entering the plea for both.
- ▶ How should he bill?

Multiple Charges: Answer

- ▶ J.R. should put his total hours for both charges (six hours) on one fee app and submit it to the judge who accepts the plea.
 - When you resolve multiple charges for the same client on the same day before the same judge, submit one fee app for all charges.
- ▶ J.R. does not have to divide up his hours among the different charges.
 - But, he should identify the most serious original charge and disposition on his fee app.

Time Tracking: Question

- ▶ J.R. forgets to keep contemporaneous time records for almost three days because he was so busy. He worked on multiple cases for multiple clients.
- ▶ What should J.R. do?

Time Tracking: Answer

- ▶ After dropping to the ground, sticking his head between his knees, and kissing a lot of his hard work goodbye, J.R. should try to reconstruct his time.
 - IDS requires billing in six-minute increments
 - IDS strongly encourages contemporaneous tracking for the benefit of IDS and for the attorney
- ▶ J.R. should set up a system for tracking his time better in future cases.

Compensable Expenses

- ▶ J.R. has incurred the following expenses. Which are compensable and at what rate?
 - ▶ Photocopies
 - Up to 10 cents per page
 - ▶ Computerized research?
 - Costs related to case in which research was done if receipts provided
 - ▶ General overhead?
 - No

More Compensable Expenses

- ▶ Mileage
 - In counties where you are on the appointed list, no mileage reimbursement for driving to, from, or within that county
- ▶ Overnight lodging
 - Actual, up to state rate, with hotel receipt
- ▶ Expenses for upkeep of home and work while out of town on a case
 - No

Experts

- ▶ J.R. wants an expert in a noncapital case.
- ▶ How does he go about getting an expert?
 - By obtaining advance judicial approval
- ▶ What's the hourly rate?
 - For experts, there is no set hourly rate; for investigators, the rate is up to \$55 per hour
- ▶ How does the expert get paid?
 - Attorney or expert should submit bill, along with copy of court order, directly to IDS Financial Services

Other Services

- ▶ J.R. wants other services in a noncapital case.
- ▶ If the court approves transcribing, how does the court reporter get paid?
 - By billing the AOC directly at approved indigent rate
- ▶ If the court approves an interpreter, how does the interpreter get paid?
 - By billing AOC directly at approved indigent rate, which apportions the cost between AOC and IDS depending on the services

Outside Compensation: Question

- ▶ J.R. has been appointed in a case. After being appointed, the client's family wants to pay him for the representation.
- ▶ May J.R. accept the money for his services?

Outside Compensation: Answer

- ▶ No. Once appointed, J.R. may not accept any compensation for his services in that case other than that ordered by the court even if J.R. withdraws and is retained. IDS Rule 1.9(e).
- ▶ IDS Rule is stricter than RPC 52.
- ▶ The family may contribute toward expert and other services if J.R. puts the funds in trust and account to the family and to the IDS director. IDS Rule 1.9(e).

Billing deadlines

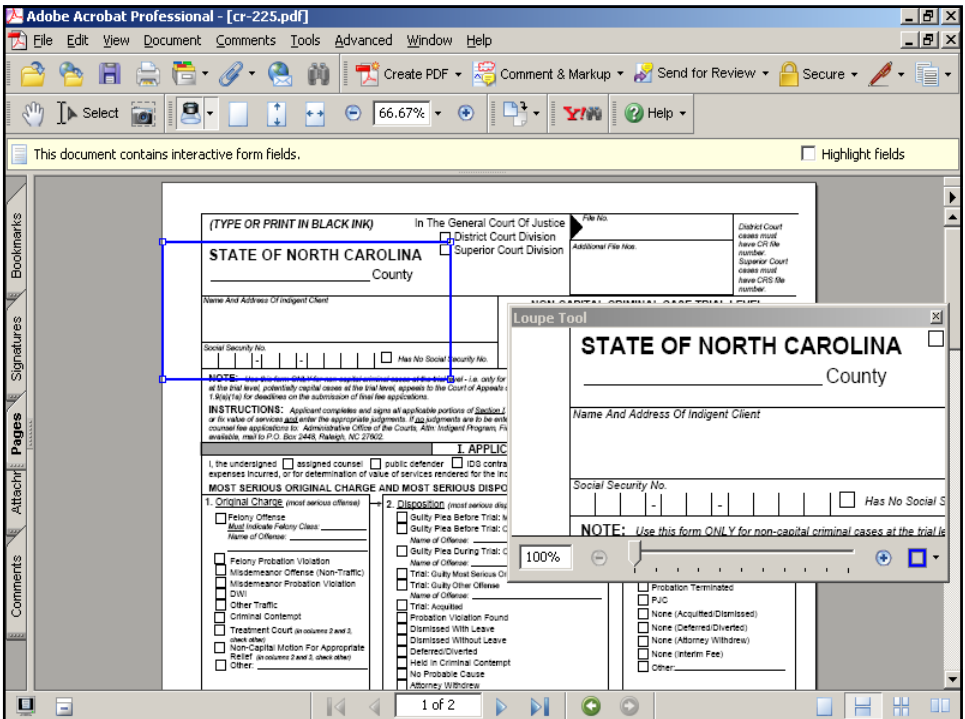
- ▶ The fee app must be submitted to the judge within one year of disposition of the case.
- ▶ You may apply to IDS for one 30-day advance extension and then submit your fee app to the judge.
- ▶ If you miss the deadline and did not obtain an advance extension, you may apply to IDS for a hardship waiver for good cause within 90 days after the deadline, and IDS sets a reduced fee.

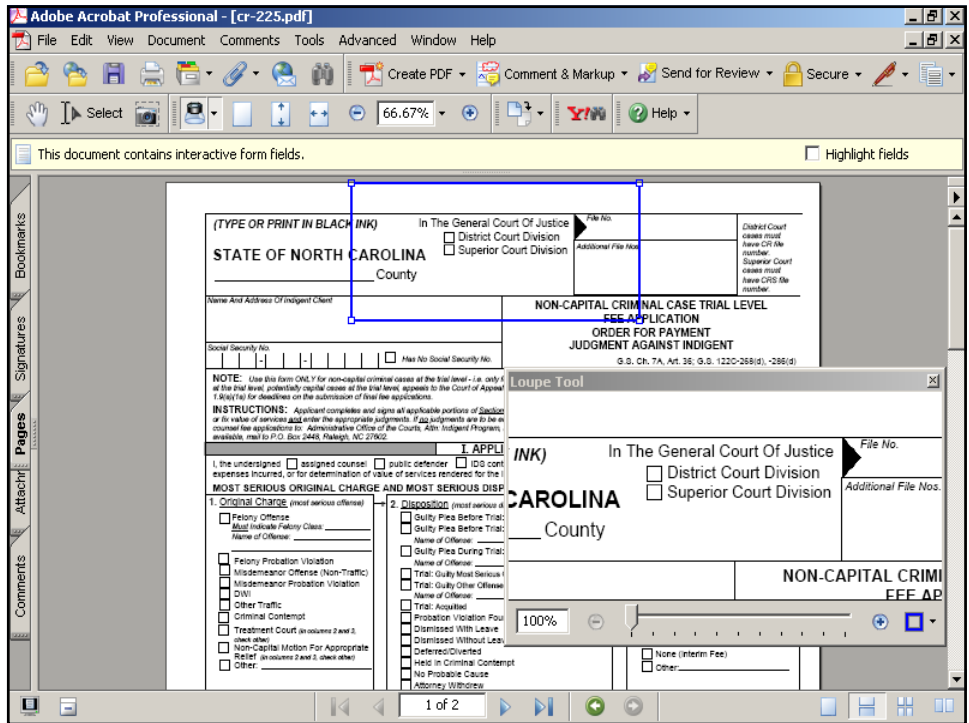
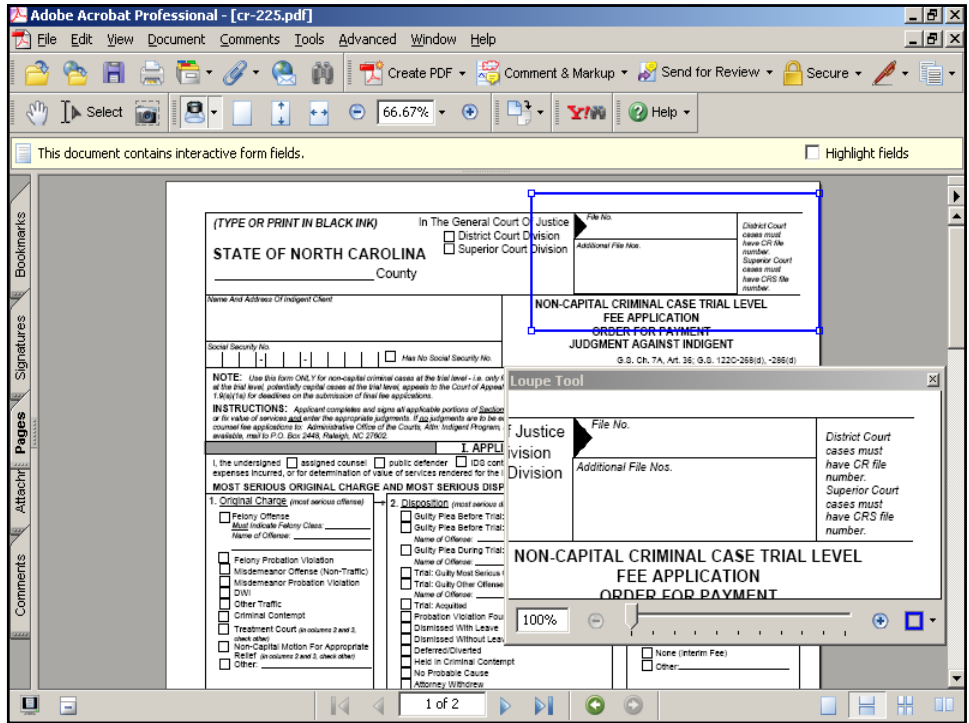
Questions?

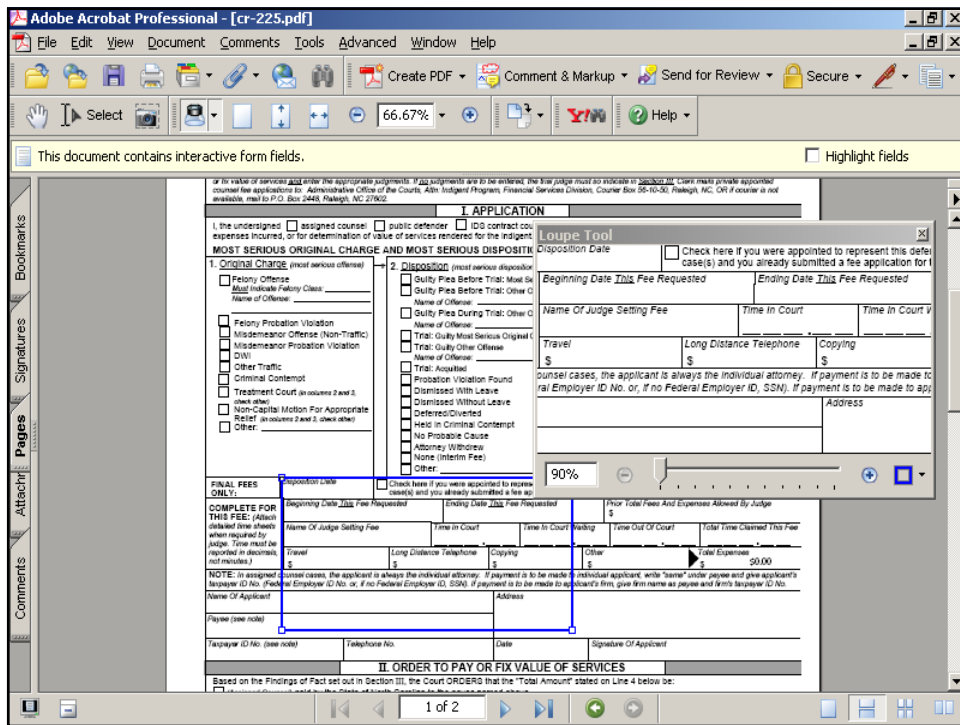
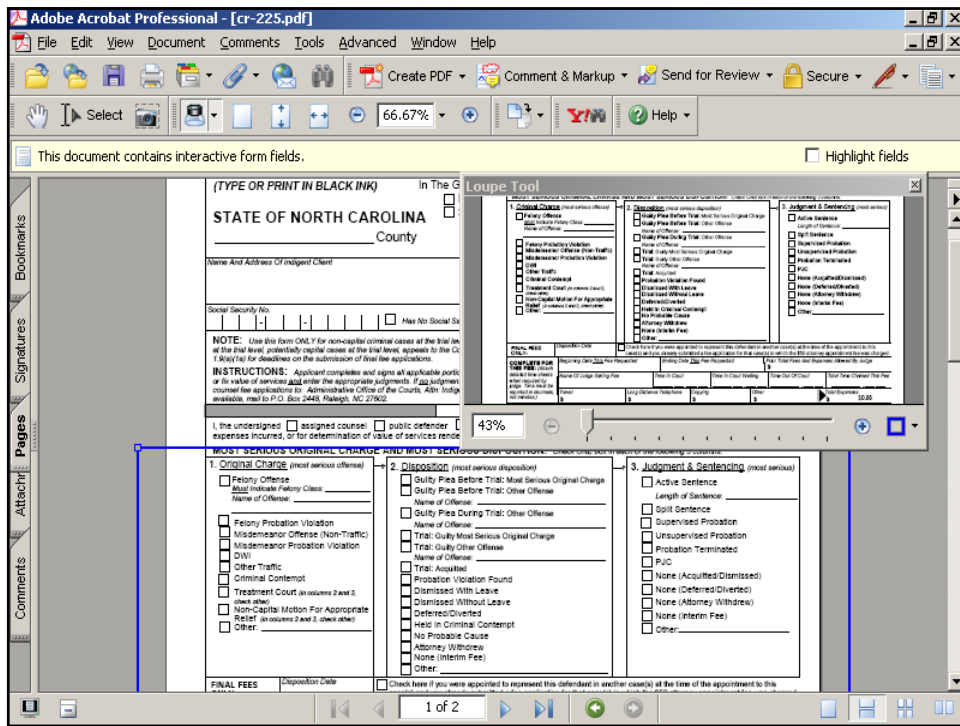
- ▶ Consult the IDS policies in your materials
- ▶ Check the IDS website, www.ncids.org, for updates
- ▶ Contact IDS
 - Danielle Carman, Assistant Director
 - Elisa Wolper, Chief Financial Officer

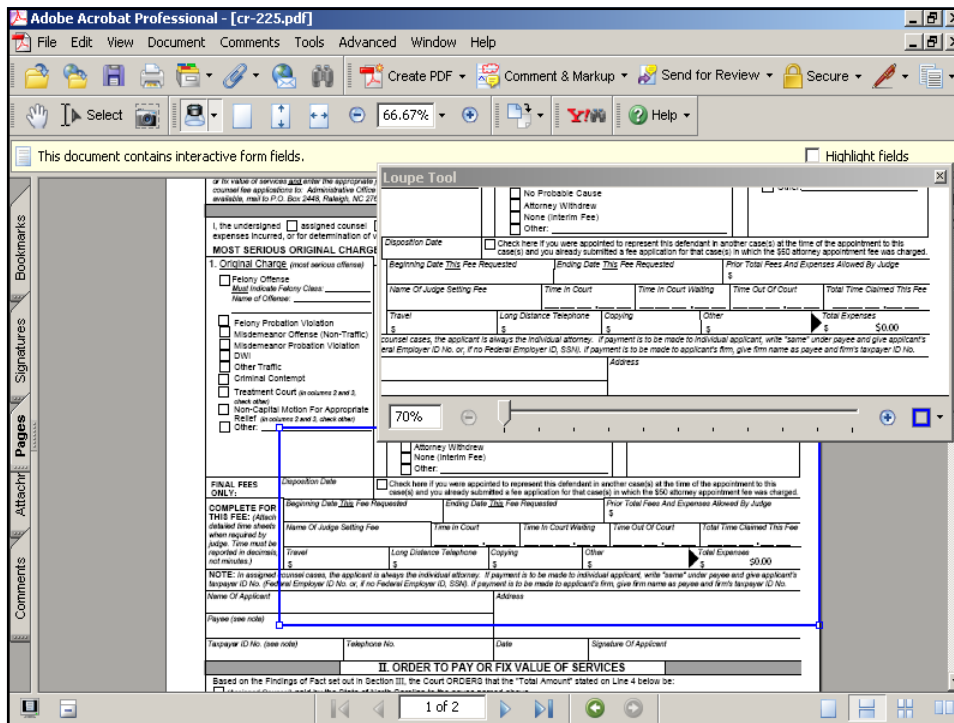
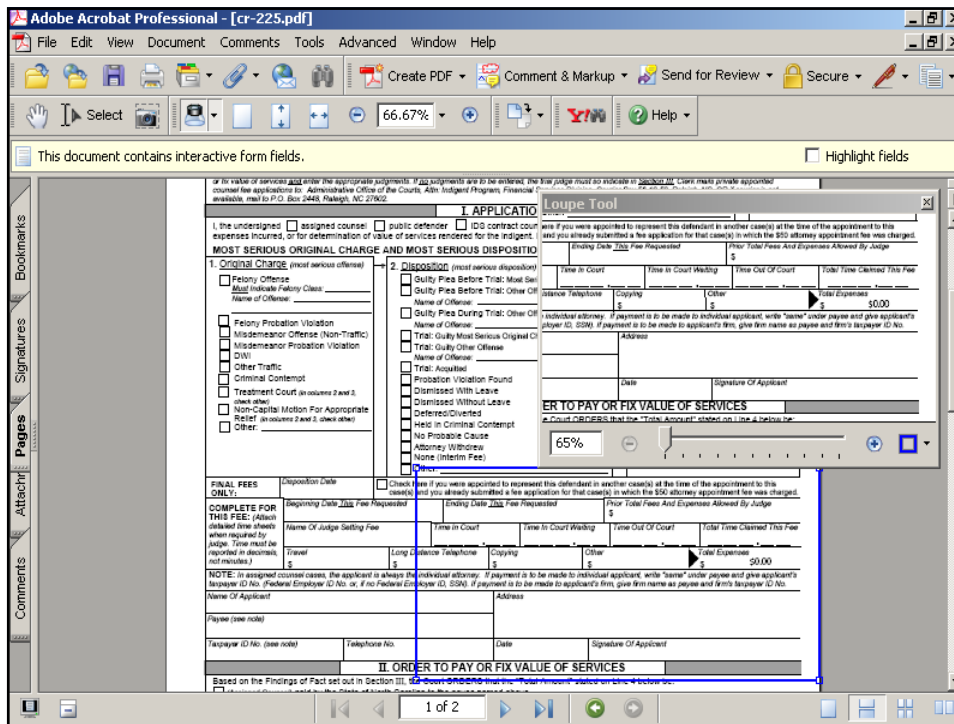
Forms

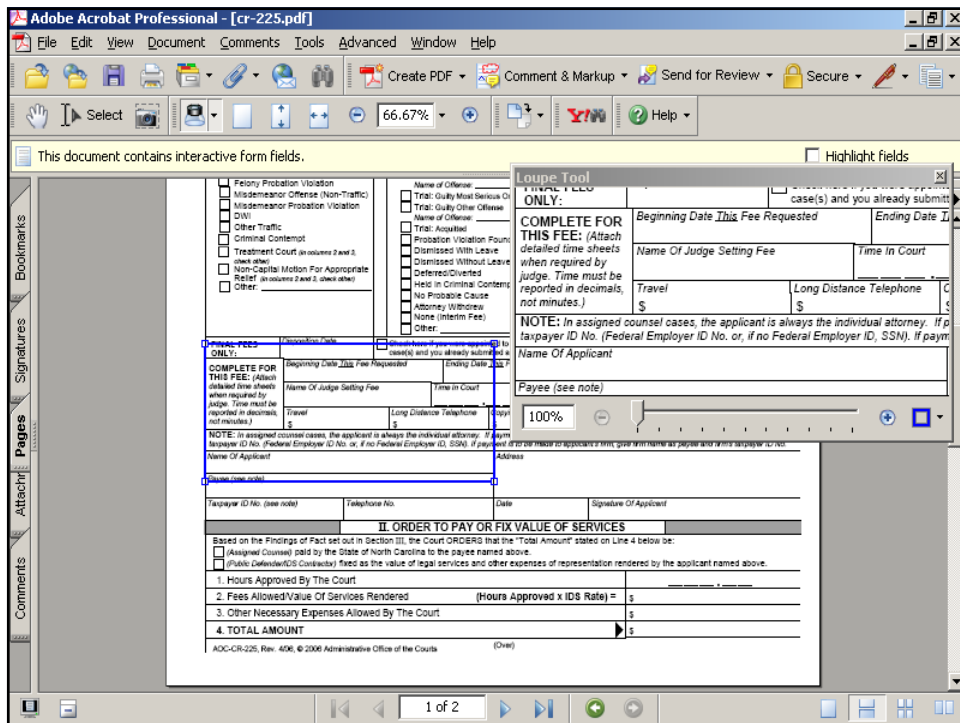
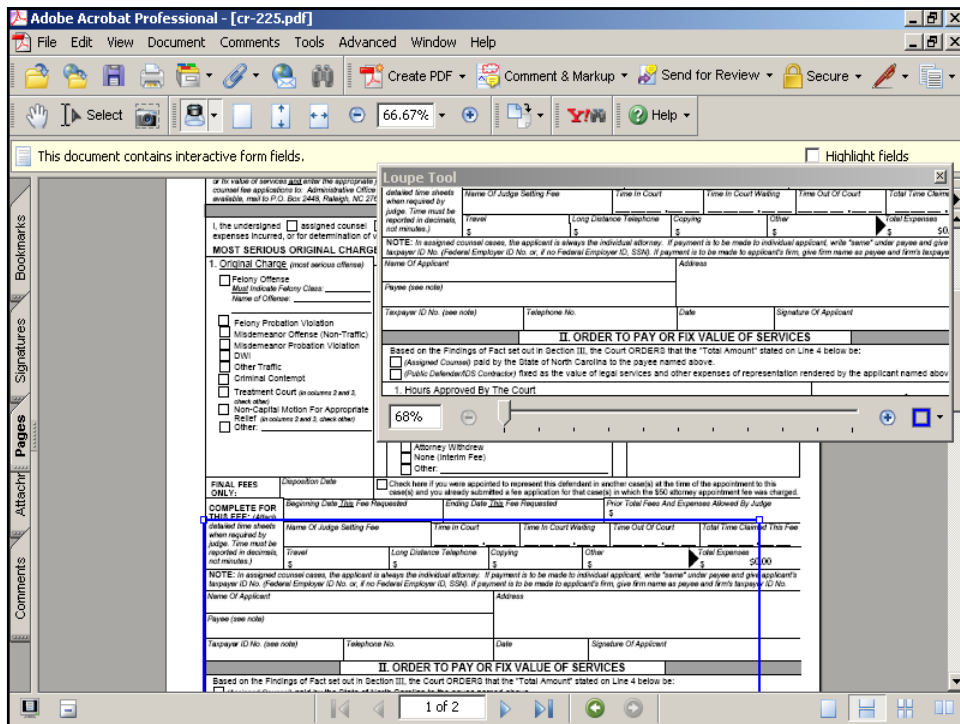
Danielle Carman
Assistant Director
Office of Indigent Defense Services

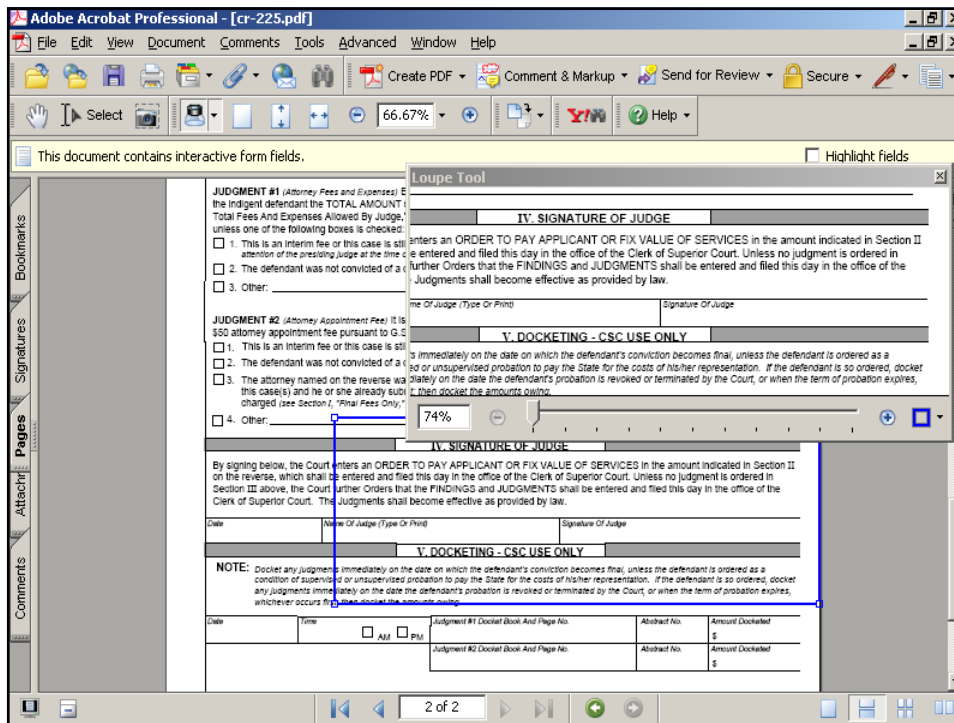
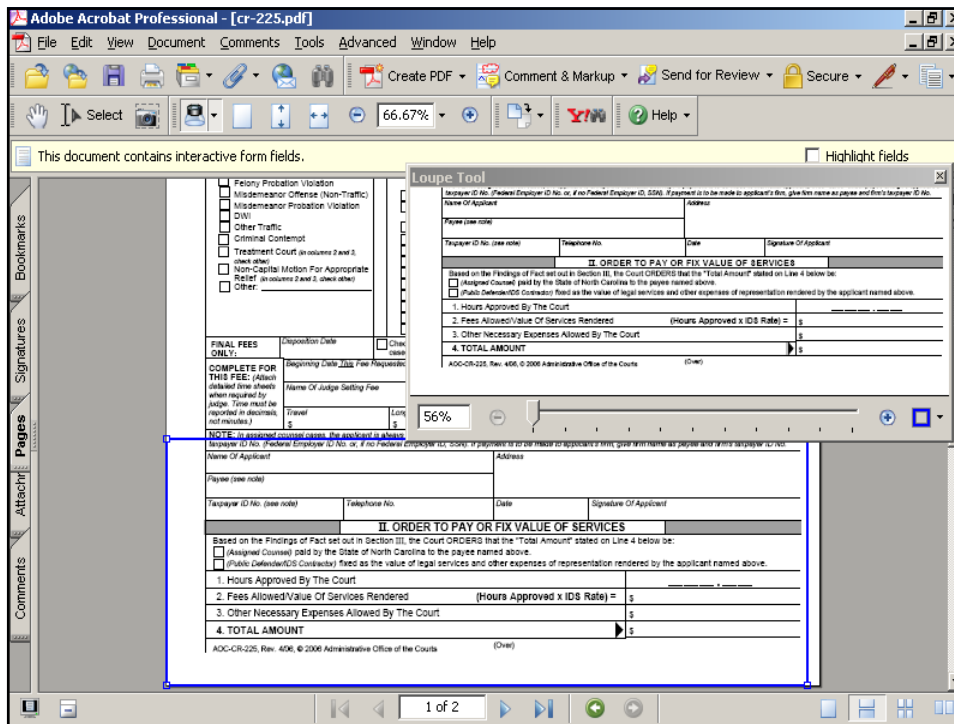


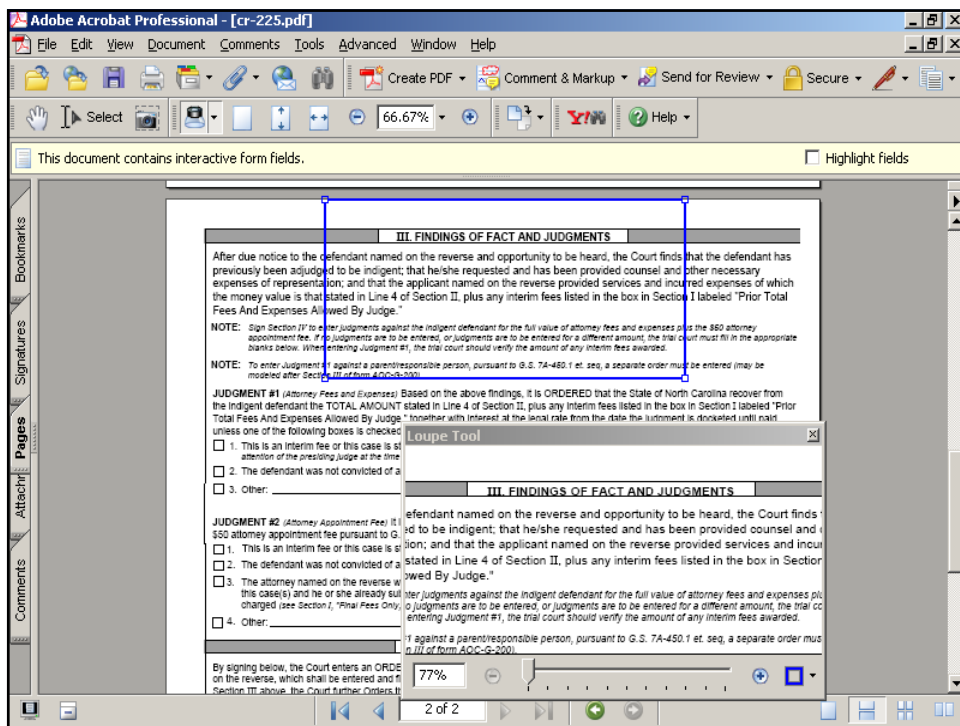












Getting Paid for Your Work in Appointed Cases

Matthew Longobardi
Auditor

Office of Indigent Defense Services

To Get Paid, You Must:

1. Be set up as a vendor in the NC Accounting System (NCAS); and
2. Submit a fee application

Getting Set up as a Vendor

- ▶ IDS Financial Services will set you up as a vendor when we receive your first fee application
- ▶ If your fee application is completed in full, it will contain all of the information we need:
 - The payee name and address; and
 - Your tax identification number

Payment Options

- ▶ **E-pay**
 - Funds are received by electronic deposit into an account you designate
 - You get your money faster (within 3 business days of the notification)
 - There's no chance that a check will get lost in the mail
- ▶ **Mailed Paper Check**
 - You will receive a check in the mail several days after checks are cut
 - If a check is lost in the mail, you will need to complete an affidavit and indemnity bond before a replacement check can be issued

We Strongly Encourage Attorneys to Use E-Pay

- ▶ To sign up for e-pay, go to www.ncids.org, click on “Forms & Applications” and then “Indigent Defense Attorney or Expert Electronic Payment Form”

1099 Tax Notices

- ▶ Each February, you will get a 1099 Tax Notice with your total earnings (fees plus reimbursed expenses) from the prior calendar year
- ▶ Your earnings are reported to the IRS as taxable income

If Your Information Changes

- ▶ If you change firms, taxpayer ID, or address, please contact IDS
- ▶ Putting the new information on a fee application is not enough to change your vendor set up

Records Retention: Case Files and Billing

Danielle Carman
Assistant Director
Office of Indigent Defense Services

Retention of Case Files

- ▶ Case file retention is governed by the Revised Rules of Professional Conduct
 - *See* RPC 209 (Jan. 12, 1996)

Ethics Rule

- ▶ **RULE:**
 - The original file belongs to the client
 - A closed client file may be destroyed after 6 years have passed since the conclusion of the representation

- ▶ **EXCEPTION:**
 - If the client gives written consent, a closed file may be destroyed at any time

IDS Recommendations

- ▶ IDS recommends a more stringent approach to case file retention in appointed cases, even if the client consents to earlier destruction

Cases Resulting in Convictions of Class A Felonies

- ▶ IDS recommends that these files should be retained indefinitely

Cases Resulting in Convictions in Superior Court of Offenses Lower than Class A Felonies

- ▶ IDS recommends that these files should not be destroyed before 6 years after the date of disposition

Juvenile Delinquency Files for any Class A–E Felony

- ▶ IDS recommends that these files should not be destroyed before 6 years after the date of disposition

Abuse/Neglect/Dependency and Termination of Parental Rights Cases

- ▶ In general, IDS recommends that these files should be retained for 6 years after the conclusion of the case
- ▶ However, if the parent had an appointed GAL, IDS recommends that the case file should be retained indefinitely

Other Cases Disposed in District Court

- ▶ IDS recommends that attorneys maintain these files, including files for felonies disposed in district court and special proceedings, for a minimum of 2 years

Retention of Billing Records

- ▶ Attorneys should place a copy of their fee applications and all supporting documentation in the client's file
- ▶ If at all possible, the copy that you file should be signed by the presiding judge, so that you are in a position to resubmit your claim if it is inadvertently lost somewhere during "the journey of a fee app"

Retention of Billing Records: Tracking Payments

- ▶ Appointed attorneys should track all payments received from IDS and reconcile those payments against the attorney's billing records

Retention of Billing Records: Fee Applications & Time Sheets

- ▶ Appointed attorneys should retain copies of their billing records for 6 years after the conclusion of the representation, along with the rest of the client's case file
- ▶ If the client's case file is destroyed sooner than 3 years after the date of payment in the case, attorneys should still maintain their billing records for 3 years in accordance with IRS regulations

Why Take a Stringent Approach to Records Retention?

- ▶ IDS' more stringent approach to retention of case files will ensure that you are in compliance with all applicable ethics rules and better protect your former clients in the event that they need access to their case files
- ▶ IDS' recommended approach to retention of billing records will protect you if any of your fee petitions are lost or if IDS has any questions about your billing after a fee has been paid