

Attorney Fee Applications - Issues for District Court

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Judge's Role

Order for Payment of Services

Legal Authorization for Judgment against Client

- Approve fee, based on information provided and any other information you have or request
- *Approving fee is actually approving the number of hours, as IDS rates are set by Commission*
- *Attorney out of pocket expenses, as allowed by IDS, can be authorized at Judges' discretion*

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Judge's Role

Order for Payment of Services

Legal Authorization for Judgment against Client

- When time claimed seems too high?
- When APD or contract attorney claims very little time?
- When you know very little about case?
- When quality of work is not acceptable?

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Calculating the Award

- Hourly rate, varies by court, appointment and/or disposition date, and highest charge (and expected to change again)
- Flat fees in Burke, Cabarrus, Davidson, Iredell, Lincoln, Rowan
 - Long standing in Cabarrus & Rowan, legislative initiative in Burke/Davidson/Iredell/Lincoln
 - Chief District Court Judge can request to opt out of flat fees
- Exceptions to hourly rate—per session /specialty courts—approved by IDS at Judge's request

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Judge's Role

- Order for Payment of Services
- Legal Authorization for Judgment against Client
- For Public Defenders and Contract Attorneys, the fee application is only for purposes of entering judgement as compensation is determined by salary or contract
- For attorneys assigned and paid by case, the judgment can be less than approved fee and can take into account client's ability to pay
- Statutory language on recoupment-the judgment amount can deviate from the attorney's payment:
 - In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender.
- The Court is required to grant clients notice and an opportunity to be heard on the judgment

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Clerk's Role

- Maintain court files
- Send to IDS (in Raleigh) for payment
- Bookkeeper and/or Civil Department for fees owed by clients if convicted
- Some clerks review fee applications for accuracy and completeness, but that is not assumed
- Specific practices vary by county

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IDS accepts fee applications ONLY from the Clerk of Court

- Best practice is that the Clerk retains custody of fee application once award signed by the Judge but we recognize that is not always the practice

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Role of Indigent Defense Services

- Set Policies
 - Hourly Rates
 - Deadlines
 - Consolidation of charges resolved together
- Process Payment
 - Basic client info, including social security number
 - Case information
- Collect Data
 - Expense Policies
 - Required Attachments

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Role of Indigent Defense Services

- Set Policies
 - Financial Information
- Process Payment
 - Valid payee
- Collect Data
 - Data needed to process as invoice in state accounting system
 - Verify not already paid

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Role of Indigent Defense Services

- Set Policies
 - Review as Legal Document
 - Applicants Signature
 - Judge's or Clerks' Signature
- Process Payment
 - Entitlement to Counsel (eg not infractions)
- Collect Data
 - Correct Jurisdiction (potentially capital and appellate go to IDS, not trial Judge)
 - Correct Form & Attachments

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Common Attachments

- Court findings Substitutive GAL
- CR 224 for Class 3 Misdemeanor Appointments
- Dockets for per session work
- Time Sheets
- Receipts

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Role of Indigent Defense Services

- Set Policies
 - Common misunderstandings in areas IDS can not pay
 - GAL for children or private TPR
 - GAL for minor estate
 - GAL for child in delinquency court
 - Assistive GAL for parents
 - Undisciplined youth
 - Soldiers & Sailors Relief Act
 - Class 3 Misdemeanors
- Process Payment
- Collect Data

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If IDS can not process payment

- Returned to attorney via Clerk's office for correction by attorney and/or Judge
 - Modifications by Judge must be initialed by Judge
- If no entitlement to counsel, also notify Judge/Clerk
- Most common reasons: missing signatures or dates, incorrect hourly rate, missing case information, missed deadline, illegible information, duplicate submission

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When IDS Does Closer Review

- Large fee applications (25 hours) require supervisor approval
 - *Unusual fees also given to IDS Director for review*
- Spot check client/case information
- Spot check time sheets for billing anomalies
- For interim fee applications, compare dates

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Other Areas of IDS Review

- Experts require court authorization and should not be paid directly by attorney—rate schedule on AOC G309 although IDS Director can allow deviation
- We are available to discuss any concerns with Judges and Clerks
 - IDS Director, Fiscal Officer, General Counsel
- At request of court officials, can do in-depth review of specific attorney billing patterns

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WHY DOES THE FEE APPLICATION INCLUDE SO MANY CASE DETAILS

- Fee application information is IDS's primary source of data to analyze costs and evaluate the criminal defense system
 - Identify trends in case type
- Calculate average costs
- Analyze data to set appropriate contract rates
- Key Performance Indicators—payment data combined with ACIS data

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Frequently Asked Questions

- Interims--Yes, at Judge's Discretion
- Travel Time—at Judge's Discretion if not commuting time
- Call & Fail—IDS does not require waiting time for attorney to bill although some local rules require; deadline for submission triggered by dismissal with leave
- Frequency of Billing—best practice in child welfare cases is at each phase of case (initial disposition, permanency planning, etc)

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Frequently Asked Questions

- If presiding Judge is not available to sign—Chief District Court Judge can
- Appeals to Superior Court—attorney can bill for District Court time at that disposition or wait and bill all time at Superior Court disposition
 - Hourly rate based on court of disposition

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Resources IDS can provide Judges

- Many questions are very case specific—call or email
- Analysis of average costs by case type
 - Statewide
 - Specific County
 - Specific Attorney
- Systems Evaluation Project
- IDS website includes detailed rules and policies & procedures
- Attorney fee payments in criminal cases posted on our website (fee transparency)

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Issues in FY2020

- Anticipate some increase in hourly rates and continued complex rate structure
- Potential increase in appointment fee and court of justice fees for indigent defense
- Legislature may direct modification of fee applications to require more itemizations (???)
- Potential new Public Defender Office -District 27B
- Issues related to appointment of Chief Public Defender in split districts

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