

Guidelines for Filling Out Fee Applications and Submitting Them to the Court

What is Recoupment, and Why Is It Important?

“Recoupment” means that the defendant, respondent, or some responsible person is ordered at the termination of the court proceedings to repay the State for the representation that was provided. All money that defendants pay back via recoupment goes directly to the indigent defense fund to pay for legal services for other indigent defendants and respondents. Expected recoupment revenues are a part of IDS’ annual budget. The Legislature calculates how much money IDS should recoup each year and deducts that amount from our appropriation.

There are two primary methods of recoupment in North Carolina:

1. *Repayment Through Probation.*

The court can make repayment of attorney’s fees a condition of supervised or unsupervised probation pursuant to G.S. 15A-1343(e) (or recommend repayment as a condition of work release or post-release supervision if the person is incarcerated pursuant to G.S. 15A-1340.36, 148-33.2, or 148-57.1). Under this system, the indigent defendant is ordered to repay attorney fees through probation by making payments directly to the Clerk of Court.

2. *Repayment Through Set-Off Debt.*

The court can enter a civil judgment against the person for the amount of fees found to be due, and that amount is then recovered through the interception of state income tax refunds and lottery winnings. *See* G.S. 7A-450.1 through -450.4, 7A-455; *see also* G.S. 105A-1 through 105A-16 (Setoff Debt Collection Act).

The civil judgment order is located on the back of the applicable fee application form. In criminal cases, the judge automatically enters a judgment by signing the back of the fee application form unless he or she “opts out” of a judgment by checking the applicable box. In other cases where the entry of judgment is discretionary, the judgment section on the back of the fee application forms requires the judge to make an affirmative finding before a valid judgment is entered.

What Public Defenders Need to Do

When a non-capital criminal or non-criminal case is disposed at the trial level and is recoupment-eligible, the attorney *must* submit a fee application to the presiding judge. This is required for both private appointed counsel and public defenders. *See* G.S. 7A-455.

The reason IDS created the carbonless copy fee application form was to provide PD offices with an easy way to generate two copies of each fee application.

1. The white fee application copy

This is the complete fee application form. It has both a front and back. The white copy is to be turned in to the judge when the case is recoupment-eligible (see below for recoupment-eligible cases).

2. The yellow copy

This is a partial copy of the fee application form. It only has the front of the fee application form and the

reverse side is blank. Many offices complete the disposition report by counting the number of yellow fee application forms turned into their administrative staff by attorneys.

Remember, by law, the judge is supposed to order recoupment or consider ordering recoupment in certain cases, and the fee application form triggers the civil judgment aspect of recoupment. Once you submit the fee application form to the judge, your job is done. You do NOT need to get a copy of the fee application with the judge's signature.

Recoupment-Eligible Cases

Not all types of cases are recoupment-eligible, and not all dispositions lead to recoupment.

1. *Criminal Cases.* (Fee Application Forms AOC-CR-225 and AOC-CR-425)

In all adult criminal cases in which the defendant is "convicted," the statute provides that the court "shall" enter a judgment for attorney fees. G.S. 7A-455. While recoupment appears mandatory in these circumstances, the statute is subject to constitutional standards. Thus, in criminal cases, recoupment can be ordered if the defendant is convicted, pleads guilty or *nolo contendere*, or a probation violation is found. On the other hand, recoupment can not be ordered if the defendant is acquitted or the case is dismissed. Recoupment also can not be ordered before the conclusion of the case, such as when an attorney files for interim fees or submits a fee application at the time of withdrawing from a case.

It is the position of AOC and IDS legal staff that recoupment should not be ordered in cases that end in a prayer for judgment continued ("PJC") or deferred prosecution. However, ultimately, this is a call for the presiding judge to make based on his or her understanding of the law.

2. *Cases Involving Minors.* (Fee Application Forms AOC-J-411 and AOC-G-200)

Recoupment from a parent or guardian is authorized in some proceedings involving minors. Various statutes authorize recoupment from a parent or guardian of the costs of an attorney or a guardian ad litem provided to a minor in the following types of proceedings:

1. Juvenile delinquency cases when the juvenile is adjudicated delinquent (G.S. 7A-450.1 through -450.4, 7B-2000);
2. Undisciplined contempt cases when the juvenile has been held in contempt (G.S. 7A-450.1 through -450.4, 7B-2000);
3. Criminal convictions of a defendant under the age of 18 (G.S. 7A-450.1 through -450.4);
4. Abuse, neglect, or dependency cases when the juvenile has been adjudicated abused, neglected, or dependent (G.S. 7A-450.1 through -450.4, 7B-603);
5. Termination of parental rights cases when the parent's rights have been terminated (G.S. 7A-450.1 through -450.4, 7B-603); and
6. Voluntary admission cases when the minor is committed (G.S. 7A-450.1 through -450.4, 122C-224.1).

All of the applicable statutes direct the court to follow the procedures for recoupment in G.S. 7A-450.1 through -450.4, which give the judge discretionary authority to order the parent or guardian to repay attorney or guardian ad litem fees after considering the financial situation of the parent or guardian, the relationship of responsibility involved, and whether the minor is emancipated or not dependent.

3. *Non-Criminal Cases.* (Fee Application Form G-200)

Recoupment is also authorized by G.S. 7B-603 in cases when counsel is provided to an adult in abuse, neglect, or dependency, or termination of parental rights proceedings. The parent or guardian may be held responsible for the costs of their own counsel or guardian ad litem only if the child is found to have been abused, neglected, or dependent, or the parent's rights are terminated. G.S. 7B-603 directs the court to follow the procedures for recoupment in G.S. 7A-450.1 through -450.4, which give the judge discretionary authority to order the parent or guardian to repay attorney or guardian ad litem fees after considering the financial situation of the parent or guardian, the relationship of responsibility involved, and whether the minor is emancipated or not dependent.

No other non-criminal cases are currently covered by our statutes. The main types of proceedings that generate counsel fees are contempt and involuntary commitment. The courts may currently be ordering recoupment when a person is convicted of criminal contempt, such as when a person willfully fails to pay child support in violation of a court order, but are not authorized by statute to do so when a person is found in civil contempt. The courts also are not currently authorized to order recoupment in involuntary commitment proceedings involving adults.

How to fill out the fee application

When filling out the fee application, the most important thing to do is to make sure that all fields are completed. Many offices use CMS to fill out much of the information automatically. Please make sure of the following:

- All fields are completed. This includes the county; court; file number; client's name, address, and social security number, if known; charge, class, and name of offense, if applicable; disposition; judgment; disposition date; time spent on the case; judge's name; and attorney's name.
- Check the box for the most serious original charge, which means the highest charge that was filed against the defendant, not the highest charge of which the defendant is convicted. If this charge is a felony, please put both the class and name of offense. Some felonies could have many classes, so please specify both, or it may be difficult to determine the correct charge. For example, it would be next to impossible to determine what class of felony "drugs" would be.
- For Drug Treatment Court, Community Resource Court, and other specialized courts where the attorney represents many clients during a single session in court, do not submit a fee application for each case. Instead, please submit a single fee application with "VARIOUS" as the defendant's name and report the total number of hours that the court session lasted. You must also attach to this fee application either that day's docket with the clients represented clearly identified or a list of names, file numbers, and session dates for all clients represented during that session.
- Please make sure that the fee application is submitted during the fiscal year in which the case was disposed. Holding onto fee applications for disposed cases hurts IDS's revenues and ultimately may impact our ability to provide necessary funds for your office.