

**NORTH CAROLINA
OFFICE OF INDIGENT DEFENSE SERVICES**

**REPORT ON MODEL FEE SCHEDULE
MARCH 15, 2018**

**THOMAS MAHER
EXECUTIVE DIRECTOR**



About the Office of Indigent Defense Services

The Office of Indigent Defense is responsible for the provision of counsel and other necessary expenses of representation for indigent persons entitled to counsel in North Carolina state courts. Its mission is to deliver services in the most efficient and cost-effective manner without sacrificing quality representation.

INTRODUCTION

Section 19.4 of Session Law 2016-94 required the North Carolina Administrative Office of the Courts (NCAOC), in conjunction with the Office of Indigent Defense Services (IDS) to implement a pilot project establishing a uniform fee schedule for the payment of attorneys' fees for legal representation of indigent persons in district court. The pilot was to be implemented in one or more counties in six judicial districts, in consultation and collaboration with the chief district court judges and the district bar in each of the selected districts.

The special provision directed NCAOC to report by March 15, 2018 to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety on the status of pilot. This report serves to meet that legislative mandate.

SELECTION OF THE PILOT COUNTIES

The special provision set specific parameters for selection of the six pilot counties. The selected counties were to include at least two counties with small caseloads, two counties with medium caseloads, and two counties with large caseloads. Districts 10, 18, and 26 specifically were excluded as possible pilot counties.

Working within those parameters, IDS reviewed data on work volume, quality of outcomes, and the number of active private assigned counsel in districts across the state. IDS and NCAOC ultimately selected the counties below for participation in the pilot.

- ❑ **Large:** Iredell County (District 22A), Davidson County (District 22B)
- ❑ **Medium:** Lincoln County (District 27B), Burke County (District 25)
- ❑ **Small:** Watauga County (District 24), Macon County (District 30)

DEVELOPMENT OF THE MODEL FEE SCHEDULE

The special provision set forth specific criteria regarding development of the fee schedule. Specifically, IDS and NCAOC were required to consider the following factors:

- (1) The amount required to cover the full cost of providing adequate legal services and representation to indigent persons.
- (2) The procedure for and time frame within which attorneys' fees shall be awarded.

- (3) A methodology, to be implemented as part of the pilot project, that provides for review of the uniform fee schedule at least every biennium and that incorporates appropriate increases in the uniform fee schedule based on the information from the review.
- (4) Any other criteria deemed relevant by the Administrative Office of the Courts.

IDS used data collected from fee applications to calculate the average hours for each case type statewide and specifically in the pilot counties. These statewide averages served as a foundation for the Model District Court Fee Schedule, together with flat fees already in place in Cabarrus and Rowan Counties. IDS also sought and considered input from local court officials and attorneys, and the Offices of Special Counsel, Appellate Defender, Parent Attorney Coordinator, and Juvenile Defender.

Based on data collected by IDS from fee applications and considering these criteria, IDS developed a Model District Court Fee Schedule (“Fee Schedule”). The Fee Schedule attached as Attachment A represents the Fee Schedule currently in use in the pilot counties.¹

On May 8, 2017, IDS issued policy guidelines to govern the pilot. A copy of those guidelines – *Indigent Defense Services Policies Governing Attorney Fee and Expense Applications for Uniform Fee Pilot* – is included as Attachment B. The policy provides guidance on common issues that arise in paying private assigned counsel for representation. IDS also prepared a FAQ sheet, which is included as Attachment C.

The Model District Court Fee Schedule was designed to cover the majority of cases resolved in district court. However, certain case types proved to be problematic under the proposed fee schedule. For example, civil commitment proceedings present issues due to factors outside judicial system control such as varied practices at local hospitals and commitment facilities, which leads to significant variation in the number of attorney appointments and the complexity of the proceedings. Child support enforcement contempt proceedings raise similar issues because of significant variation among districts. While some jurisdictions appoint and compensate attorneys per client, many jurisdiction compensate appointed counsel by session and pay a flat fee for a session of court regardless of the number of cases disposed.

After reviewing statewide and local data for civil commitment and child support proceedings, IDS decided to leave in place service delivery contracts and session-based compensation policies already in use in the pilot counties. Existing contracts to represent children in juvenile delinquency proceedings also were left in place. The Model District Court Fee Schedule

¹ In November 2017, the Indigent Defense Commission increased the rate for high-level felonies from \$70 to \$75 an hour, and IDS adjusted the pilot fee schedule proportionally to reflect those changes.

consequently covers the majority of cases resolved in district court, but specifically excludes civil commitment, child support enforcement, and some juvenile delinquency proceedings.

Finally, an important component of the Fee Schedule is an exceptional case policy. The exceptional case policy deals with extraordinary cases in which the amount of time reasonably necessary to provide effective representation is above what can be considered part of the average. The policy allows an attorney to request to be compensated under the hourly system instead of the pilot fee schedule if assigned counsel believes that the amount of time spent on a case qualifies as exceptional.

IMPLEMENTATION OF THE UNIFORM FEE PILOT

The pilot began on June 1, 2017 in the six pilot counties and applied to cases disposed in district court in which counsel was appointed on or after June 1, 2017. As previously indicated, the pilot specifically excludes civil commitment, child support enforcement, and some juvenile delinquency proceedings.

In order to successfully evaluate the pilot, IDS has attempted to capture relevant data including performance indicators related to case outcomes, the ability of the counties to maintain rosters with adequate numbers of experienced counsel, and financial data such as increases or decreases in per case costs and impact on recoupment. Throughout the pilot, IDS has maintained contact with attorneys and judges in each pilot county.

Since implementation, IDS has made two significant adjustments to the pilot based on ongoing available data and stakeholder input. First, in November 2017, the Indigent Defense Commission increased the rate for high-level felonies from \$70 to \$75 an hour. IDS subsequently adjusted the pilot Fee Schedule proportionally to reflect changes in rate by the Indigent Defense Commission. Second, in December 2017, IDS excluded child welfare proceedings from the Fee Schedule in Macon County because of concerns about the ability to provide adequate representation.

On December 20, 2017, District Court Judge Leslie informed IDS that all of the attorneys who had been on the roster in Macon County for appointment to represent parents in child welfare proceedings had removed themselves from the roster. Judge Leslie relayed that a number of attorneys removed themselves from the list as soon as the pilot began, with attorneys continuing to opt out until only two attorneys remained. One of the remaining attorneys was relatively inexperienced and did not have the advantage gained from working with more

experienced attorneys. The other attorney had to travel 45 minutes to get to court in Macon County. When those two attorneys subsequently removed themselves from the list, IDS informed the judges that if no attorneys were willing to work under the fee schedule pilot for these cases, then counsel could to be appointed under the hourly system.

IDS continues to monitor whether a decrease in available counsel in other counties or other case types may lead to similar results in other pilot counties. At a meeting with Macon County stakeholders on February 23, 2018, attorneys and judicial officials in Macon County informed IDS that the number of available counsel for juvenile delinquency cases also was declining. Further, because the number of attorneys for criminal cases also is declining in Macon County, delays in district court are increasingly frequent. The fact that several of the attorneys who remain on the roster are from outside the county further complicates the ability to provide adequate representation in an efficient and timely manner.

AVAILABLE DATA

As of January 23, 2018,² IDS had processed and paid 2,443 fee applications based on the Fee Schedule in the pilot counties, for a total of \$510,953. This represents 32 percent of the fee applications processed in the pilot counties and 29 percent of the fees paid in the pilot counties. IDS anticipates that the share of cases paid pursuant to the fee schedule pilot will continue to increase as cases in which counsel was appointed before June 1, 2017 are resolved and paid.

The majority of cases handled by appointed counsel in the pilot counties are criminal district court proceedings, the majority of which are non-traffic misdemeanors. Table 1 below provides a breakdown of the case types of the 2,443 fee applications processed and paid under the Fee Schedule.

² Because the Fee Schedule pilot has been operational only since June 1, 2017, cases that attorneys were able to resolve quickly are likely to be overrepresented in the data. In order to minimize the effect of these quicker cases on the dataset, IDS downloaded disposition data as of January 23, 2018.

Table 1. Case Types for Pilot Fee Applications (June 1, 2017 – January 23, 2018)

CASE TYPE	FREQUENCY
Criminal District Court (adults)	2,154
Child Welfare Proceedings (adults)	216
Juvenile Delinquency Proceedings (children)	72
Rule 17 Guardian ad Litem	1
ALL CASE TYPES	2,443

IDS paid seven fee applications, totaling \$4,097.00, under the exceptional case policy. As the exceptional case policy applies only to unusually complex cases, IDS did not expect many exceptional case fee applications during the initial months of the fee schedule pilot, but expects the use of the exceptional case policy to increase with time as more complicated, time-intensive cases are disposed.

IDS compensated 130 attorneys pursuant to the pilot. Table 2 below provides a breakdown of the number of attorneys who submitted fee application under the Fee Schedule, by county.

Table 2. Number of Attorneys Who Submitted Pilot Fee Applications (June 1, 2017 – January 23, 2018)

COUNTY	Six or More Applications	Five or Fewer Applications	TOTAL (At Least One Application)
BURKE	15	3	18
DAVIDSON	32	3	35
IREDELL	31	9	40
LINCOLN	13	4	17
MACON	5	1	6
WATAUGA	8	5	14
ALL PILOT COUNTIES	105	25	130

The limited time in which the pilot has been in operation and the modest number of fee applications paid under the pilot preclude meaningful analysis of financial implications in this report. However, early indications are that overall spending on cases resolved in district court does not seem to be affected significantly by the fee pilot. For example, the flat fee for non-traffic misdemeanors is \$185 per case in the pilot counties, while the average amount paid for those cases under the hourly system in FY 2016-17 was slightly lower at \$182.40.

Table 3 below shows the average amount paid for non-traffic misdemeanors for FY 2016-17 in all of the pilot counties.

Table 3. Average Payment for Non-Traffic Misdemeanor (FY 2016-17)

Non-Traffic Misdemeanor	Flat Fee \$185 (Pilot Fee Schedule)	Average Payment for All Pilot Counties (FY 2016-17) ³
ALL PILOT COUNTIES	\$185	\$182.40
Burke	\$185	\$191.60
Davidson	\$185	\$168.37
Iredell	\$185	\$195.51
Lincoln	\$185	\$152.55
Macon	\$185	\$258.66
Watauga	\$185	\$214.95

Because the flat fees were set based on the statewide averages paid for these case types, which in turn reflect the already low \$55-per-hour rate, it is not surprising that the cost for a case resolved under the Fee Schedule closely mirrors the average cost of the same case under the hourly system.

The short period in which the pilot has been in operation and the modest number of fee applications paid under the pilot limits the quality of meaningful analysis that can be done regarding the financial and operational impact of the pilot. IDS consequently will continue to collect data and expects to produce a report with more robust analysis by December 31, 2018.

IDS expects that by the December 31, 2018, the pilot will yield additional empirical data that will allow for more meaningful analysis. The December report will use that data to evaluate performance indicators related to case outcomes, the ability of the counties to maintain rosters with adequate numbers of experienced counsel, and financial data such as increases or decreases in per case costs and impact on recoupment.

INPUT FROM STAKEHOLDERS

Throughout the pilot, IDS has solicited input from stakeholders including district court judges, elected clerks, elected district attorneys, and attorneys representing the Departments of Social Services in the pilot counties. IDS also contacted the attorneys working under the Fee Schedule pilot, and requested that they complete an online survey.

Seventy attorneys responded to the online survey, with responding attorneys from all pilot counties. Table 4 below represents the number of responding attorneys from each pilot county.

³ Differences in the average amount of time needed to provide representation in the various counties—e.g., significant travel time in the geographically large rural districts—may account for the differences in average hourly fees.

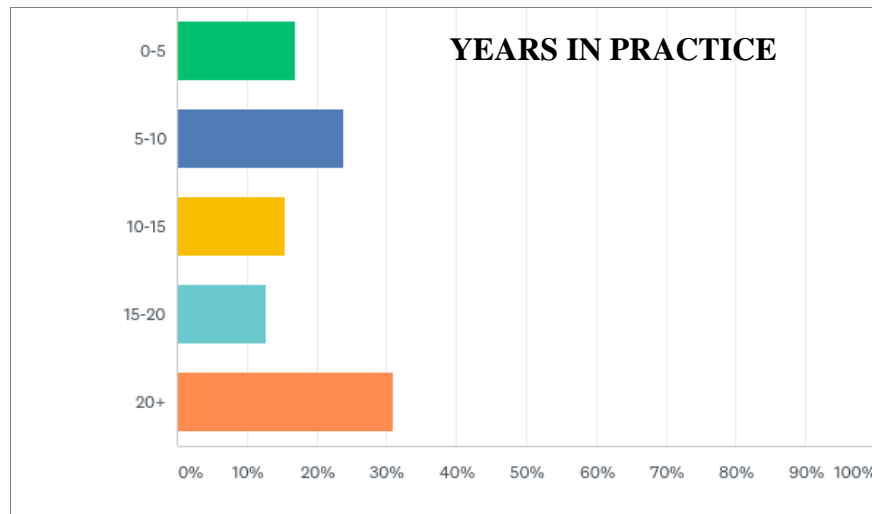
Table 4: Survey Respondents

County	Number of Responding Attorneys
Iredell County (District 22A),	14
Davidson County (District 22B)	14
Lincoln County (District 27B)	9
Burke County (District 25)	9
Watauga County (District 24)	13
Macon County (District 30)	10

Fifty-four percent of attorneys responding to the survey spend less than half of their practice handling appointed cases in district court; one third spend 50-75 percent of their practice on these cases; and 13 percent spend over 75 percent of their practice on appointed district court cases. There was a marked difference in the experience level of attorneys based on the percentage of their practice in district court-appointed cases, with the percent of time spent on district court-appointed cases decreasing as the attorneys' experience levels rose. Only 19 percent of the attorneys who reported spending more than half of their practice on appointed district court cases had 10 or more years of experience.

The level of experience for attorneys responding to the survey ranged from less than five years of experience to more than 20 years of experience. Table 5 below details the experience level of the attorneys who responded to the survey.

Table 5. Experience of Attorneys Responding to the Survey



Attorneys in each experience group reported handling each type of case. The rate at which the responding attorneys handled felonies and juvenile delinquency cases increased with

experience. Only 20 percent of attorneys with less than five years of experience handled felonies, while only 30 handled juvenile delinquency case.

The survey asked the following questions:

- ☐ Do you view the pilot as a success?
- ☐ Does the fee schedule pilot decrease, increase, or have no impact on your willingness to accept appointed cases?
- ☐ Does the fee schedule pilot impact the quality of representation?
- ☐ Does the fee schedule pilot impact the lawyers accepting cases under the fee schedule pilot?

Table 6 below details the survey responses by county.

Table 6. Survey Responses

County	Success	Not a Success	Less Willing to Accept	More Willing to Accept	Equally Willing to Accept	Impacts Quality	Does Not Impact Quality	Impacts Lawyers	Does Not Impact Lawyers
Burke	62.5%	37.5%	11%	22%	67%	44%	56%	44%	56%
Davidson	55%	45%	38%	0%	62%	43%	57%	64%	36%
Iredell	36%	64%	57%	14%	29%	71%	29%	86%	14%
Lincoln	75%	25%	37.5%	12.5%	50%	0%	100%	37.5%	62.5%
Macon	0%	100%	100%	0%	0%	100%	0%	100%	0%
Watauga	18%	82%	82%	0%	18%	50%	50%	92%	8%
ALL PILOT COUNTIES	38.46%	61.54%	54.41%	8.82%	36.76%	54.29%	45.71%	74.29%	25.71%

A majority of survey respondents indicated that they viewed the pilot as unsuccessful (61.54%) and they were less willing to accept cases under the pilot (54.41%) The majority also believed that the pilot impacts both the quality of the representation provided (54.29%) and the lawyers providing that representation (74.29%).

The results appear to suggest that attorneys in the small counties (Macon and Watauga) and working in multicounty districts view the fee schedule pilot more negatively. For example, none of the attorneys from Macon County viewed the pilot as a success, while only 18 percent of the attorneys from Watauga County viewed the pilot as a success. In contrast, 75 percent of the attorneys from Lincoln County viewed the pilot as a success.

The results also appear to suggest that there may a correlation between the amount of compensation and attorneys' perception of the pilot. Generally, the counties in which the flat

fee resulted in a significant reduction in compensation view the pilot negatively. In contrast, attorneys in Lincoln County, which has seen an increase in compensation under the fee schedule pilot, views the pilot favorably. In Lincoln County, some attorneys joined the roster for court appointments following implementation of the fee schedule pilot.

In addition to the information gleaned from the survey, IDS also solicited input from various judicial stakeholders. That input raised several significant issues that IDS is concerned may impact the availability and quality of indigent representation. A sampling of those issues and concerns is detailed below.

- ❑ Those working in the smaller, multi-county districts reported more negative impact from the fee schedule pilot, as did those working in child welfare cases. In both situations, the Fee Schedule pilot was seen as **reducing the number of qualified attorneys** willing to work on these cases and reducing the time spent by the attorneys to prepare for court. These concerns were specifically noted by a judge in District 24, which includes Watauga County, and court actors involved in child welfare proceedings in a number of counties.
- ❑ The elected district attorney for District 30, which includes Macon County, reported that the fee schedule pilot resulted in the loss of most of the experienced attorneys, with the remaining attorneys lacking the experience or skill necessary to effectively represent clients. As a result, assistant district attorneys have found the need to take steps to ensure that indigent clients are not harmed. She also reported that the loss of attorneys was **causing delays** in court as attorneys traveling to Macon from other counties often come to court without having seen their clients in advance. She specifically complained that the fee schedule pilot affected felony cases because many experienced attorneys were no longer willing to accept felony cases that may be resolved in District Court and paid pursuant to the fee schedule pilot.
- ❑ Numerous attorneys commented that the fee schedule pilot made it **difficult to spend the time needed to provide effective representation** because they felt pressure to spend less time on cases. Many also commented that they saw other attorneys cutting corners. Respondents noted that attorneys were less likely to visit clients in jail, request a continuance, or put in the time to prepare for a trial. The time pressure was greatest in those cases that are sometimes lengthy and complex such as driving while impaired and child welfare cases.
- ❑ Respondents noted that the **\$55 an hour rate was already significantly below what attorneys should be paid**, and that once they paid their overhead they were making only \$10-20 an hour. One attorney commented that it is “hard to justify taking cases for \$185. That barely covers overhead and I make about minimum wage to defend a client.”

- ❑ In some of the counties covered by the fee pilot, the views of many judges and others working in the court system were somewhat more positive than the views of the lawyers. Specifically, a number of judges and clerks commented that they believed the fee schedule pilot has made court run more efficiently as **cases appear to be resolved more quickly**, partly because attorneys are less inclined to ask for continuances and partly because paperwork takes less time.
- ❑ Attorneys commented that in cases in which they were being paid more than they would have received under the hourly system that clients still were ordered to repay the amount of the flat fee, which was **viewed as unfair to the client**. In contrast, several commented the clients benefitted because they had a clear understanding of what they would owe from the beginning of the case. Several commented that the fee schedule pilot allowed prosecutors and counsel representing DSS to **leverage the impact of a flat fee** on counsel by making counsel wait or delaying resolving a case.

Stakeholders indicate that the pilot also may create incentives to delay resolution of felony cases until the case reaches superior court or to avoid the consolidation of multiple cases when appropriate. IDS will continue to evaluate all of these preliminary indicators as the pilot moves forward, using available data and continuing input from stakeholders. Of primary concern will be the effect on the quality of representation, the availability of attorneys, and the impact on client outcomes, time to disposition, and costs.

Analysis of data helps identify differences between systems for delivering representation and allows decisions regarding the delivery of public defense to be evidence-based. In order to fully evaluate the quality of indigent defense, IDS has developed the Systems Evaluation Project, which has identified key indicators that measure outcomes for clients. Information regarding this project is available on the IDS website.⁴ Analysis of key indicators, such as the rate at which clients are convicted of the most serious charge or all charges, may help in determining whether a given system for delivering indigent defense has a positive or negative impact on the clients served. IDS will use the Systems Evaluation Project to analyze available data for the December 31, 2018 report.

OTHER CONSIDERATIONS

NCAOC implemented a similar model fee pilot in four counties during fiscal year 1995-96 (“1996 pilot”) – District 14 (Durham County), District 16A (Hoke and Scotland Counties), District 19A (Cabarrus County), and District 28 (Buncombe County). The districts volunteered to participate,

⁴ See <http://www.ncids.org/Systems%20Evaluation%20Project/index.html>.

and the pilot lasted only six months. The pilot was not intended to reduce overall spending, but rather was expected to create administrative efficiencies and alleviate problems caused with the existing district-by-district budgeting for indigent defense. Of the districts involved in the 1996 pilot, only Cabarrus County continues to use a uniform fee model.

NCAOC drafted two reports detailing the implementation and rollout of the 1996 pilot – *Committee of District Court Judges Considering Indigent Defense Fee Structures in District Court* and *Use of Per Case Fee Schedule for Representation of Indigent Persons in District Court*. Many of the issues and concerns identified in those reports are relevant to the current pilot. Many of the issues and concerns identified in those reports are relevant to the current pilot. Attorneys expressed concern that the fee structure was too low and that flat fees made it difficult to spend the required time on cases. Judges, on the other hand, expressed appreciation of the administrative convenience. Both groups expressed concerns that lawyers would not have any incentive to consolidate cases for resolution. There was no hard data on whether the six-month pilot had any impact on the quality of representation. Although the report recommended consideration of a broader implementation of the fee schedule, the use of the fee schedule was not expanded and of the four pilot districts, only Cabarrus County continues to use a uniform fee model.

In addition, it is important to note that in evaluating any system for compensating counsel who accept appointed cases, the Sixth Amendment right to the effective assistance of counsel is of paramount importance. As observed in the recent report from the North Carolina Commission on the Administration of Law and Justice (NCCALJ):

As the United States Supreme Court recently declared: “No one doubts the fundamental character of a criminal defendant’s Sixth Amendment right to the ‘Assistance of Counsel.’” This right is so critical that the high Court has deemed its wrongful deprivation to constitute “structural” error, affecting the very “framework within which the trial proceeds.” For indigent defendants, this fundamental right to effective assistance of counsel must be provided at state expense. When the system fails to provide this right, it denies indigent defendants justice. That denial has very real consequences for defendants, including excessive pretrial detention, increased pressure on innocent persons to plead guilty, wrongful convictions, and excessive sentences.

There are, however, other costs associated with the State’s failure to provide effective assistance, including costs to victims, families, communities, taxpayers and the criminal justice system as a whole. Costs to the criminal justice system include trial delays and an increased number of appeals and post-conviction challenges, all of which must be funded by North Carolina taxpayers, as are costly retrials when those

challenges are successful. As has been noted: “Justice works best when all players within the system are competent and have access to adequate resources. When the system includes well-trained public defenders, cases move faster (helping the court manage growing caseloads), and the system tends to generate and implement innovative programs.”⁵

The NCCALJ also recognized that in evaluating the impact of any compensation system for indigent defense, decisions need to be evidence-based and rely on data concerning the impact of the compensation system.

In keeping with its statutory mission to “[d]eliver services in the most efficient and cost-effective manner without sacrificing quality representation,”⁶ and in keeping with the recommendations from the NCCALJ, IDS will continue to collect data regarding the impact of the pilot on the outcomes for clients and the operation of the court systems. Analysis of this data will allow for informed, evidence-based decisions on the impact of the fee schedule pilot on the clients, lawyers and courts.

CONCLUSIONS AND RECOMMENDATIONS

IDS recommends that additional data collection, research and analysis prior to any decisions regarding the pilot. Additional data will allow meaningful evaluation of the impact of the pilot on indigent representation and as to whether certain counties or case types are better suited for the uniform fee model. IDS expects to have more meaningful data on these issues by the end of 2018, allowing the December 31, 2018 report to provide more meaningful conclusions and recommendations prior to the 2019 legislative session.

IDS further recommends that counties be allowed to opt out of the pilot after consultation with IDS and NCAOC. When the interests of justice require, IDS and NCAOC should be able to eliminate a county from the pilot to protect the constitutional right to effective assistance of counsel. Counties that opt out of the pilot will be allowed to return to the hourly compensation model or explore an alternative compensation model.

⁵ Appendix D of Final Report of NCCALJ, p. 3, (footnotes omitted).

⁶ N.C.G.S. 7A-498.1(5)

SUMMARY

The limited time in which the pilot has been in operation and the modest number of fee applications paid under the pilot preclude meaningful evaluation of the pilot in this report. IDS consequently expects to produce a report at the end of the calendar year that will include more data and allow for more meaningful analysis. In the meantime, IDS will continue to monitor and evaluate the pilot, using all available data and input from stakeholders as the project moves forward.

ATTACHMENT A
DISTRICT COURT FEE SCHEDULE

Office of Indigent Defense Services
DISTRICT COURT FEE SCHEDULE¹
 Session Law 2016-94, §19A.4

CASE TYPE	NOTES	Fee
Felonies		
Class A-D felonies	All Class A-D felonies disposed of in District Court by plea, a finding of no probable cause, voluntary dismissal, or deferral or diversion.	\$425
All other felonies	All Class E-I felonies disposed of in District Court by plea, a finding of no probable cause, voluntary dismissal, or deferral or diversion, and all felony extradition proceedings.	\$230
Misdemeanors & Probation Violations		
Class A1 misdemeanors	All Class A1 misdemeanors disposed by plea or trial, voluntary dismissal, or deferral or diversion. <i>Excludes probation violations.</i>	\$200
Class 1-3 misdemeanors and other traffic offenses	All Class 1-3 misdemeanors disposed by plea or trial, voluntary dismissal, or deferral or diversion. <i>Excludes probation violations.</i>	\$185
DWI	All cases of driving while impaired with final disposition by plea, trial, or voluntary dismissal in district court.	\$300
Probation violations	All misdemeanor or felony probation violations disposed through hearing, plea, or voluntary dismissal. Includes probation violations arising out of traffic offenses.	\$185
Contempt		
Civil and Criminal Contempt	All civil and criminal contempt proceedings. ²	\$185
Juvenile / Delinquency		
Probable Cause and Transfer •Class A-E felonies	All juvenile delinquency petitions where the juvenile is accused of committing a Class A-E felony and the State is seeking transfer.	\$535
Adjudication and Disposition •Class A-E felonies	All juvenile delinquency petitions where the juvenile is accused of committing a Class A-E felony disposed of by hearing, admission, or voluntary dismissal.	\$535
Adjudication and Disposition •Class F-I felonies •Class A1 misdemeanors	All juvenile delinquency petitions where the juvenile is accused of committing a Class F-I felony or Class A1 misdemeanor disposed of by hearing, admission, or voluntary dismissal.	\$300
Adjudication and Disposition •Class 1-3 misdemeanors	All juvenile delinquency petitions where the juvenile is accused of committing a Class 1-3 misdemeanor disposed of by hearing, admission, or voluntary dismissal.	\$200
Post-Disposition Proceedings •Motions for Review •Probation Violations	All motions for review or probation violations regardless of offense classification.	\$150
Juvenile / Child Welfare		
Adjudication and Disposition	All abuse, neglect, and/or dependency petitions or motions up to and including the initial disposition.	\$500
GAL	All abuse, neglect, and/or dependency petitions or motions up to and including the initial disposition.	\$250
Termination of Parental Rights	All termination of parental rights petitions or motions including adjudication and disposition.	\$500
GAL	All termination of parental rights petitions or motions including adjudication and disposition.	\$250
Other child welfare	All review and permanency planning hearings.	\$130
Other		
Withdrawals	All cases where the attorney withdraws or is relieved as provisional counsel after substantive work.	\$95

¹ Effective for cases to which the attorney is appointed on or after June 1, 2017 in the District Courts of Burke, Davidson, Iredell, Lincoln, Macon, and Watauga Counties

² This does not include civil or criminal contempt proceedings arising out of a child support enforcement proceeding.

ATTACHMENT B
INDIGENT DEFENSE SERVICES POLICIES GOVERNING
ATTORNEY FEE AND EXPENSE APPLICATIONS
FOR UNIFORM FEE PILOT

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To: Indigent Defense Attorneys, District Court Judges, and Clerks of Superior Court in Burke, Davidson, Iredell, Lincoln, Macon, and Watauga Counties
CC: Marion Warren, Director of Administrative Office of the Courts
Re: Indigent Defense Services Policies Governing Attorney Fee and Expense Applications for Uniform Fee Pilot
From: Office of Indigent Defense Services
Date: May 8, 2017

The below policies govern fee applications that are directed to district court judges in indigent district court criminal and non-criminal cases in Burke, Davidson, Iredell, Lincoln, Macon, and Watauga Counties as provided in the attached District Court Fee Schedule developed pursuant to S.L 2016-94.

1. **Effective date.** The fee schedule pilot is effective for newly assigned cases beginning June 1, 2017. Cases in which assigned counsel was appointed prior to the effective date but which are resolved after the effective date, will be paid under the current hourly rates. The fee schedule applies to newly assigned cases including a former client with new charges but excluding an existing client with new charges. In the event an attorney who was appointed to represent a client on a case prior to the effective date is subsequently appointed to represent the client on a new charge after the effective date, assigned counsel will be paid under the hourly system for all work if all charges are resolved at the same time before the same judge. In the event that the newly assigned charge is resolved separately, assigned counsel will be compensated under the current hourly rates for the original charge and under the fee schedule for the newly assigned charge.
2. **Fee Applications.** Assigned counsel must follow all current IDS billing policies that are not inconsistent with billing policies specific to the uniform fee schedule pilot. Assigned counsel should use the same fee applications to obtain compensation under the fee schedule currently in use for affected case types. (CR-225, J-411, and G-200). Assigned counsel should continue to track and report their time on the fee applications. AOC and IDS are required to gather this information for reporting purposes. This information also will be used to determine whether the fee schedule is reasonable and whether fees should be raised in the future.
3. **Billing Time.** For all cases finally disposed in the district court where the uniform fee schedule applies, the appointed attorney must sign and submit to the judge the final fee

application no later than six months after the date on which the case was disposed at that phase.

4. **Exceptional case policy.** The fee schedule is designed to cover the majority of cases resolved in district court, with the average amount of time spent on cases being fairly compensated under the schedule. However, no fee schedule can cover the truly extraordinary case in which the amount of time reasonably necessary to provide effective representation is above what can be considered part of the average. In cases in which assigned counsel believes that the amount of time spent on a case qualifies as exceptional, assigned counsel may request that the court compensate counsel under the hourly system rather than under the fee schedule. Any fee application in which the case is compensated as exceptional must be accompanied by a detailed timesheet reflecting the work done by counsel. Although IDS will provide data on average hours to the judges as a guide in determining whether a specific case qualifies as exceptional, the decision to designate a case as exceptional and to pay counsel under the hourly system is solely within the discretion of the presiding judge.
5. **Disposition of multiple charges.** All of the charges or matters that are finally disposed at the trial level on behalf of the same client before the same judge at the same time in the same court must be submitted on one fee application. Assigned counsel will be paid under the fee schedule for the most serious charge resolved.
6. **Dismissals with leave / Failures to appear.** Assigned counsel should continue to represent the client on the original charge and any related failure to appear charge, regardless of whether the client is rearrested. Assigned counsel may file a motion to withdraw and submit a fee application at the earliest of the following:
 1. the prosecutor voluntarily dismisses the charge with leave, or
 2. six months from the date of the failure to appear passes.However, in the event the client is subsequently arrested and the charge reinstated, counsel is responsible for representing the client and may not submit an additional fee application.
7. **Deferred prosecutions.** Assigned counsel has an obligation to ensure the case is dismissed if the deferral or diversion is successful or to defend the client against the charge if the deferral or diversion fails. Absent a contrary local rule, assigned counsel may submit a fee application at the time the deferred prosecution is entered; however, assigned counsel may not file a subsequent fee application for work done if the district attorney reinstates the charges.
8. **Expenses.** Assigned counsel may still obtain reimbursement for out-of-pocket expenses under current IDS policies governing expenses for hourly cases.
9. **District Court to Superior Court.** In the event there are proceedings in superior court for a charge already disposed in district court, either through a dismissal followed by indictment or appeal for trial *de novo* in superior court, assigned counsel should file a fee application under the fee schedule for the work done in district court. In the event

assigned counsel continues representation in superior court and the case is resolved in superior court, assigned counsel may bill under the hourly system for time spent on the case while pending in superior court. A case that is appealed to superior court and remanded to district court is treated as resolved in district court and the fee schedule applies.

10. **Juvenile/Child Welfare.** Assigned counsel must submit a fee application (G-200) at the end of each substantive hearing. For purposes of AND and TPR proceedings, a substantive hearing is defined as the initial adjudication and disposition, an initial review hearing, an initial permanency planning hearing, each subsequent review and/or permanency planning hearing, and a termination of parental rights hearing. The timing of fee application submission is:

1. after the initial disposition hearing,
2. after each completed review hearing,
3. after each completed permanency planning hearing, and
4. after the completion of any TPR proceeding.

Assigned counsel should not submit a fee application after a continuance.

11. **Juvenile/Delinquency.** In the event a juvenile client is transferred from the juvenile division of the district court to the superior court, assigned counsel should submit a fee application pursuant to the fee schedule for all work done in the district court. If assigned counsel continues representation of the juvenile in the superior court, assigned counsel may bill under the hourly system for time spent on the case while pending in superior court.

ATTACHMENT C
UNIFORM FEE SCHEDULE
FREQUENTLY ASKED QUESTIONS

UNIFORM FEE SCHEDULE – FREQUENTLY ASKED QUESTIONS
S.L. 2016-94, §19A.4

QUESTIONS	ANSWERS
Q: Does the fee schedule apply? The Uniform Fee Schedule applies to all case types listed in the District Court Fee Schedule and is effective for newly assigned cases beginning June 1, 2017.	
Q: Does the fee schedule apply to work done in superior court?	A: No – the fee schedule applies to all case types listed in the District Court Fee Schedule finally disposed of in the district court.
Q: Does the fee schedule apply to felonies disposed of in district court?	A: Yes – the fee schedule covers felonies finally disposed of in district court.
Q: What about misdemeanors appealed to superior court?	A: Yes and no – the fee schedule applies to work done in district court; however, you should bill at the hourly rate for work done in superior court.
Q: Does the fee schedule apply if the case is appealed from district to superior court but remanded to district court for final disposition?	A: Yes – the fee schedule applies when a case appealed to the superior court is remanded and disposed of in district court. If you determine the case may qualify as exceptional, then you should submit the case to the presiding district court judge for consideration as exceptional.
Q: What if on April 10 I was appointed to represent a client for one charge, and on June 9 I was appointed to represent him on another.	A: If the new and old charges are resolved at the same time, the fee policy in effect at the time of your original appointment controls. If the charges are <u>not</u> resolved at the same time, the fee schedule applies to the charges to which you were appointed on June 9 and the hourly fee applies to the charges to which you were appointed on April 10.
Q: What does not change with the implementation of the fee schedule?	
Q: Which fee application do I use?	A: You will continue to use the same fee application you use under the hourly system. Criminal – AOC-CR-225 Juvenile Delinquency – AOC-J-411 Parent Representation – AOC-G-200
Q: Is the fee applied per defendant, per charge, per file number, or per disposition?	A: The flat fee is applied per disposition in a single session of court. Example: If your client is charged with multiple offenses and you resolve all of them in a single session of court, you will be compensated at the fee applicable for highest original charge.

UNIFORM FEE SCHEDULE – FREQUENTLY ASKED QUESTIONS
S.L. 2016-94, §19A.4

Q: What does not change with the implementation of the fee schedule?	
Q: Does the fee schedule alter the scope of my representation?	A: No – the fee schedule does not alter the scope of your representation. If, for example, you negotiate a deferred prosecution for your client, then you still are required to ensure that the charges are dismissed if the deferral is successful or, if not successful, represent the client if reinstated.
Q: How is the fee schedule applied? Assigned counsel will be paid under the fee schedule for the most serious charge resolved in the same session of court.	
Q: How do I determine which fee applies when my client is charged with multiple offenses?	A: The fee is based on the highest original charge. Example: If you resolve a Class 1 Misdemeanor and a DWI at the same time, you will be compensated at the DWI rate regardless of whether the DWI and the misdemeanor arose out of the same or separate transactions.
Q: What if my client pleads to/ is found guilty of a lesser included offense and the lesser included offense is covered by a lower fee than the original charged offense?	A: The fee is based on the highest original charge. Example: If you resolve a Class H felony by admission to a lesser included misdemeanor, you will be compensated at the felony rate.
Q: What does “substantive work” mean?	A: If you withdraw from a case after performing substantive work, you will be compensated at the withdraw rate. If you have performed substantial work—e.g., you have appeared in court with the client several times, met with him several times, and were preparing for trial when you discovered a conflict, you may want to consider asking the court to designate the case as exceptional. Example: You are appointed to represent an incarcerated client. After reviewing the charging documents and visiting him at the jail you discover a conflict. You have performed substantive work and are entitled to compensation at the withdraw rate.

UNIFORM FEE SCHEDULE – FREQUENTLY ASKED QUESTIONS
S.L. 2016-94, §19A.4

Q: How do I seek compensation?	
Q: Can I submit a fee application for expenses?	A: Yes – you still may obtain reimbursement for out-of-pocket expenses under current IDS policies governing expenses for hourly cases.
Q: Can I submit an interim fee application?	A: Yes – Generally, you should wait until final disposition to submit a fee application; however, IDS understands that in some cases waiting for payment until final disposition may impose an unfair burden. In cases where there is a significant delay between the filing of charges and final disposition and you feel that the amount of time worked on the case may entitle you to exceptional pay, you may wish to file an interim fee application.
Q: If my client receives a deferred prosecution, can I go ahead and submit my fee application?	A: Yes – but you may not file a subsequent fee application if the district attorney reinstates the charges.
Q: When can I seek exceptional pay?	A: The fees are designed to fairly compensate you based upon the average number of hours spent on that case type. If you determine that the fee is unfair for a particular case because you have worked an exceptional number of hours, you may ask the court to designate the case exceptional. It is solely within the presiding judge’s discretion to designate a case as exceptional.
Q: How do I seek exceptional pay?	A: When you determine a case may qualify as exceptional you should submit the appropriate fee application and a detailed time sheet to the presiding judge for designation as exceptional. If the presiding judge approves the case for exceptional pay, you should submit the signed fee application and the detailed time sheet to IDS. The detailed time sheet is the only way to alert IDS that the case has been designated as exceptional.

UNIFORM FEE SCHEDULE – FREQUENTLY ASKED QUESTIONS
S.L. 2016-94, §19A.4

Child Welfare – Parent Representation and Parent GAL	
Q: When should I file my fee application?	A: You should file a fee application following the final disposition for each segment of the proceeding. Counsel should file a final fee application after: <ol style="list-style-type: none"> 1. the initial disposition hearing, 2. each completed review hearing, 3. each completed permanency planning hearing, and 4. the completion of any TPR proceeding.
Q: Can I submit one fee application for multiple segments of a proceeding?	A: No – You should submit one fee application following the final disposition for each segment of the case. Exception: If multiple segments of the case—e.g., adjudication, initial disposition, and initial review hearing—are concluded during a single session of court, you should submit one fee application with a note clarifying that multiple segments were concluded during a single session of court. You will be compensated for one segment at the rate applicable for the most serious disposition. If you submit a fee application seeking compensation for multiple segments of a proceeding without clarification, IDS will return the fee application and seek clarification.
Q: Can I submit an interim fee application if a case takes a long time to reach disposition?	A: Yes – Generally, you should wait until a final disposition for the segment of the proceeding to submit a fee application; however, IDS understands that in some cases waiting for payment until final disposition may impose an unfair burden. In cases where there is a significant delay between filing of a petition and final disposition and you feel the amount of your work on the case may entitle you to exceptional pay, in which case you should request the court designate the case as exceptional for that segment of the proceeding. Once a case has been designated exceptional it remains exceptional for that segment of the proceeding.

UNIFORM FEE SCHEDULE – FREQUENTLY ASKED QUESTIONS
S.L. 2016-94, §19A.4

Q: What if I file a motion for review in an AND case?	A: A motion for review will be paid at the review hearing/ permanency planning hearing rate.
Q: Which fee applies if my client relinquishes his/her parental rights?	A: A relinquishment is a disposition and will be compensated at the rate applicable for the segment of the proceeding during which it is tendered.
Q: What if we are unable to conclude the adjudication and disposition in a single session of court?	A: If you are unable to conclude the adjudication and disposition in a single session of court, you should wait until the disposition is concluded to file your fee application unless you determine an exceptional pay may be warranted, in which case you should request the court designate the case as exceptional for that segment of the proceeding.
Q: What if I am relieved as provisional counsel?	A: If you are relieved or removed as counsel in a case where you were provisionally appointed to represent a parent, you should follow the withdraw policy (See above: “What does “substantive work” mean?”)
Juvenile Delinquency	
Q: Does the fee schedule apply if the case is transferred to superior court?	A: Yes and no – the fee schedule applies to the work you do in the district court. If the case is transferred to superior court, you should bill at the hourly rate for work done in superior court.
Q: How do I bill if the case is adjudicated in a pilot county but transferred to a non-pilot county for disposition?	A: The fee schedule applies to the portion of the proceeding that takes place in the pilot county but the hourly rate applies to the portion of the proceeding that takes place in the non-pilot county. Example: If your client is adjudicated delinquent in a pilot county, then you should submit a fee application for applicable adjudication and disposition rate. If you also represent the juvenile in the disposition proceeding in the non-pilot county, you should submit a fee application in that county for hourly compensation. The same is true in the reverse.

If you have questions about the following procedures, please feel free to contact Whitney B. Fairbanks at (919) 354- 7200 or Whitney.B.Fairbanks@nccourts.org.

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