

# PRIVATE ASSIGNED COUNSEL RATE INCREASES AND FEE APPLICATION MODIFICATIONS

## REPORT

MARCH 1, 2020

Submitted to the North Carolina General Assembly  
Pursuant to Section 10.1.(d) of Session Law 2020-83.

On

03 | 01 | 2021

This report is submitted pursuant to Section 10.1.(d) of Session Law 2020-83, which directs the IDS Office to report to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety by March 1, 2021 regarding the implementation of rate increases to the Private Assigned Counsel Fund and modifications to appointed counsel fee application forms.

## **I. Increases to the Private Assigned Counsel Fund**

IDS fiscal staff made a recommendation for rate increase to the Indigent Defense Services Commission (“Commission”) during its January 22, 2021 meeting. With future demands on public defense funding difficult to predict during the ongoing pandemic and the small amount of revenue anticipated from the new fees, particularly in the short term, IDS fiscal staff was comfortable recommending only targeted rate increases. By unanimous vote, Commissioners approved the new rates recommended for implementation on March 1, 2021. Tables with the new rates and all rates are attached to this report as Appendices A and B respectively.

In making its recommendation, IDS relied on two factors.

1. Receipts from two new funding sources authorized by Session Law 2020-83. In Section 10.1.(a), S.L. 2020-83 increased the appointment fee that is assessed in most cases covered by the Indigent Defense Services Act from \$60 to \$75. Of the entire fee, \$70 is to be remitted to IDS for support of the Indigent Persons' Attorney Fee Fund and \$5 is to be remitted to the Administrative Office of the Court's Information Technology Fund. In Section 10.1.(b), it amended G.S. 7A-304(a) by inserting a new court cost in the amount of \$2 to be remitted to IDS.
2. Modest current availability. Depressed court activity during the pandemic has meant that IDS began the calendar year with modest availability. However, depressed court activity has led to depressed recoupment receipts.

Sections 10.1.(a) and 10.1.(b) became effective on December 1, 2020. Thus, at the time of this report, we have seen three months of new receipts. As of February 26, 2021, the new court cost provided for by G.S. 7A-304(a)(3c) has generated \$79,620. IDS is not able to calculate the impact of the increased appointment fee as, due to other factors, total appointment fee revenues to date are down from prior years. Compared to prior years, appointment fee receipts were down 20% during the three months preceding the fee increase and 22% during the three months following the increase.

Although IDS fiscal staff does not expect the fees to generate significant revenue during FY2021, it does expect it to generate as much as \$1.6 Million by FY2023, with the increase in the appointment fee generating an additional \$400,000 annualized and the new court cost generating approximately \$1.2 Million annualized.

The forecasted additional revenue along with the current availability allowed IDS fiscal staff to recommend an immediate modest targeted increase to counsel rates. The estimated total for the approved targeted increases is approximately \$1 Million when applied to private assigned counsel paid by the hour. When applied to future contract renewals, the cost increases to \$1.1 Million based on FY2019 dispositions as of July 7, 2020, with a modest additional cost related to a 1.5% increase in the juvenile defense contracts. Projected itemized costs and the volume of payments are attached to this report as Appendix C.

For more information about the targeted rate increases, please see the attached February 12, 2021 memorandum from Darrin Jordan, Chair of the IDS Commission, and Mary Pollard, IDS Executive Director, which is attached to this report.

## **II. Modifications to Appointed Counsel Fee Application Forms**

In compliance with Sections 10.1.(a) and 10.1.(c) of Session Law 2020-83, which directed that IDS and the Administrative Office of the Courts Office of the Courts (“NCAOC”) “update all appointed counsel fee application forms in order to provide space for the itemization of time spent on appointed cases,” the NCAOC revised the below forms.

Fee Application/ Order for Payment	New Appointment Fee	Itemized Time
AOC-CR-225 (Non-Capital Criminal Case Trial Level)	✓	✓
AOC-CR-425 (Capital Case Fee Application)	✓	✓
AOC-CR-426 (Non-Capital Criminal or Non-Criminal Appeals)		✓
AOC-J-411 (Juvenile Delinquency Trial Level Fee Application)		✓
AOC-G-200 (Civil Case Trial Level Fee Application)		✓

The revised forms were made available for use by public defense attorneys on December 1, 2021. Prior to these revisions, the fee applications allowed for itemization of time in court, time in court waiting, time out of court, travel, copying, and other expenses.

After extensive review of all affected forms, IDS asked AOC staff to leave the itemization as is while inserting a note to attorneys referencing Section 10.1.(c) of Session Law 2020-86. This decision was based on several factors. First, the forms already had space for itemization. Second, there is no room on the forms for further details. Finally, and perhaps most significantly, local judicial offices have the authority to request time sheets pursuant to local policy or to metrics applied on case-by-case basis. For example, many judges routinely request itemized time sheets in cases where the attorney has requested payment for more than five hours on a misdemeanor. IDS has requested the Clerks include the timesheets to IDS as attachments to the fee applications.

Requiring attorneys to submit itemized timesheets in every case would create a significant logistical burden for clerks and IDS. Given that the fee applications provide for itemization and

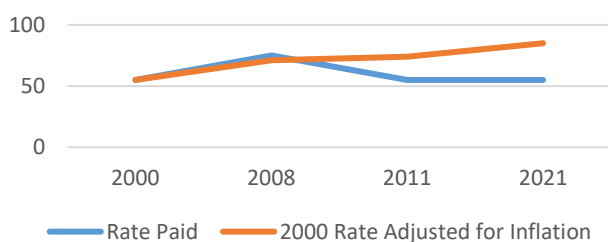
the process provides Judges the opportunity to seek input, IDS does not intend to return fee applications submitted without time sheets. IDS advised attorneys to attach a timesheet if, in their own judgment, they are unable to sufficiently itemize their time using the provided fields or the presiding judge requests one. IDS respectfully requests that the General Assembly repeal Section 10.1.(c) of Session Law 2020-83, which will allow IDS to make clarifying revisions to the form.

### III. Conclusion

While IDS is grateful to have been able to make modest targeted rate increases, private practitioners who are willing to take appointed cases are still earning less money than they were in 2011, particularly when inflation is taken into account. It has become increasingly difficult to recruit attorneys to represent indigent clients in many areas of the state.

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Table 1: District Court Hourly Rate Historical Changes and Adjusted for Inflation



Consider that compensation for most district court dispositions today is \$55, the same as it was in 2000 and twenty dollars an hour less than it was in 2011. Today's \$55 rate, when adjusted for inflation since 2000, is only 66% of what was paid in 2000.

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In conclusion, the IDS Commission and Office respectfully request the General Assembly appropriate \$17.1 Million in recurring funding to do widespread significant increase in hourly rates for all case types.

## APPENDIX A: 2021 TARGETED RATE INCREASES

Case Type	Current Rate	New Rate	Date
Class A – D felonies paid by hourly rate (including satellite-based monitoring “bring back” hearings and reviews of NGRI determinations) whether disposed of in district or superior court	\$75	\$80	Cases finally disposed on or after March 1, 2021
Driving While Impaired offenses disposed of in district court	\$55	\$60	Cases finally disposed on or after March 1, 2021
Class A1 misdemeanors disposed of in district	\$55	\$60	Cases finally disposed on or after March 1, 2021
Potentially capital cases proceeding non-capitally at the trial level	\$75	\$80	Work done on or after March 1, 2021
Provisional counsel in capital cases	\$75	\$80	Work done on or after March 1, 2021
Non-capital appeals and non-capital postconviction where the most serious conviction was a Class A-D felony, and appeals of satellite-based monitoring hearings	\$75	\$80	Work done on or after March 1, 2021

The counties operating under the Uniform Fee Pilot will see the following fee increases based on the rate restoration:

- Class A – D felonies disposed of in district court will increase from \$425.00 to \$450.00; and,
- Class A – E felonies adjudicated and disposed in juvenile delinquency proceedings will increase from \$535.00 to \$575.00.

For counsel providing representation on high-level felonies under contracts, there will be a proportionate increase in the non-hourly compensation.

CURRENT HOURLY ASSIGNED COUNSEL RATES March 1, 2021		
Case Type <sup>1, 2</sup>	Effective Date for Current Rate	Current Rate
<b>Superior Court Division</b>		
Non-potentially capital Class A-D felony	Final disposition on or after March 1, 2021	\$80
Satellite-based monitoring “bring back” hearings	Final disposition on or after March 1, 2021	\$80
Reviews of NGRI determinations	Final disposition on or after March 1, 2021	\$80
Non-capital post-conviction where the most serious conviction was a Class A-D felony	Final disposition on or after March 1, 2021	\$80
Class E-I felony or felony probation violation	Final disposition on or after December 1, 2018	\$60
All other cases resolved in Superior Court	Final disposition on or after December 1, 2018	\$60
<b>District Court Division</b>		
Non-potentially capital Class A-D felony	Final disposition on or after March 1, 2021	\$80
Driving While Impaired	Final disposition on or after March 1, 2021	\$60
Class A1 misdemeanor	Final disposition on or after March 1, 2021	\$60
Class E-I felony or felony probation violation	Final disposition on or after December 1, 2018	\$60
Civil cases (abuse, neglect, dependency, termination of parental rights, child support contempt, civil contempt, and involuntary commitment proceedings)	Work done on or after July 1, 2011	\$55
All other cases resolved in District Court	Final disposition on or after May 2, 2011	\$55
<b>Capital Cases</b>		
Provisional counsel	Work done on or after March 1, 2021	\$80
Potentially capital cases proceeding non-capitally (cases declared non-capital at Rule 24 hearing or by the DA, or cases that are 1 or more years from warrant served date)	Work done on or after March 1, 2021	\$80
Potentially capital cases (undesignated cases within 1 year of warrant served date)	Work done on or after May 2, 2011	\$85
Capital cases (cases declared capital at a Rule 24 hearing)	Work done on or after November 1, 2017	\$90
Capital post-conviction	Work done on or after November 1, 2017	\$90
<b>Appellate Division</b>		
All other non-capital criminal or non-criminal appeals	Work done on or after July 1, 2011	\$60
Non-potentially capital Class A-D felony appeals and appeals of satellite-based monitoring hearings	Work done on or after March 1, 2021	\$80
Capital appeals	Work done on or after November 1, 2017	\$90
<b>Hearings Before Post-Release Supervision or Parole Commissions or Clerk of Court</b>		
Parole and post-release supervision revocation hearings	Final disposition on or after March 1, 2021	\$60
Competency proceedings pursuant to Chapter 35A	Final disposition on or after May 2, 2011	\$55

<sup>1</sup> Applicable rates are based on the highest charge against the defendant or juvenile.

<sup>2</sup> Unless otherwise specified, rates for the juvenile division of district and superior courts are the same as the equivalent charge against an adult defendant.

## APPENDIX C: ITEMIZED COSTS AND VOLUME OF PAYMENTS

	Old Hourly Rate (pre- 03.01.21)	New Hourly Rate (post 03.01.21)	# of Payments FY2019	Estimated Cost	# of Contract Dispositions FY2019	Estimated Cost of Contract Extension	Total Estimated Cost
High level Felony (district & superior trial level)	\$75	\$80	4,458	\$450,000	1,093	\$ 192,600	\$642,600
High level Felony (non- capital appeals)	\$75	\$80	145	\$30,000			\$30,000
Capital Trial (proceeding non-capitally)	\$75	\$80	1,800	\$275,000			\$275,000
DWI (district court trial level)	\$55	\$60	4,882	\$135,000	1,303	\$20,000	\$155,000
A1 Misdemeanor (district & superior trial level)	\$55	\$60	7,962	\$157,000	2,384	\$35,000	\$192,000
<b>Total Costs:</b>		\$1,047,000				\$247,500	\$1,294,600

MARY POLLARD  
EXECUTIVE DIRECTOR  
MARY.S.POLLARD@NCCOURTS.ORG

TELEPHONE:  
(919) 354-7200

**OFFICE OF  
INDIGENT DEFENSE SERVICES  
STATE OF NORTH CAROLINA**

www.ncids.org  
123 WEST MAIN STREET  
SUITE 400  
DURHAM, N.C. 27701

DARRIN JORDAN  
CHAIR

DOROTHY HAIRSTON MITCHELL  
VICE CHAIR

To: Attorneys  
From: Darrin Jordan, IDS Commission Chair, and Mary Pollard, IDS Executive Director  
Date: February 12, 2021

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**NOTICE OF TARGETED RATE HIKES FOR PAC AND CONTRACT ATTORNEYS**

On January 22, the Indigent Defense Services Commission voted for a very modest rate hike for some classes of case. This is possible based on revenue forecasts that include receipts from the Court of Justice fee that went into effect on December 1 and from the fifteen dollar increase in the indigent appointment fee.

We hope that this measure is only an interim step towards an across-the-board rate hike that will restore the effective hourly rate paid to attorneys before the 2011 legislative budget cuts required a significant rate cut. The additional revenue was insufficient to raise rates across the board, and the Commission and staff carefully considered how best to allocate it.

The IDS Commission and staff are committed to seeking recurring funding that will allow for hourly rates that reflect the value of the work that you do for your clients. We will need your help in that effort and hope that all of you will reach out to your elected representatives to talk with them about the importance of the work that you do for your communities and the impact that unfairly low rates have on you and your practice.

We are grateful for the work that you do for indigent clients.

Important information about the new rates, including how and when they are to be implemented, is summarized below. For your convenience, a table with the current and new hourly rates for all affected case types also is attached to this memo.

Potentially capital cases will continue to have three hourly rates: While the case is potentially capital, the rate remains \$85, and if the case becomes non-capital, either because the prosecution informs counsel that the case will not be a capital case or does not declare the case capital in the first 12 months, the rate will revert to \$80 an hour. Work done after the case is declared capital at a Rule 24 hearing, and for capital appeals and capital post-conviction work, will continue to be paid at \$90.

For counsel providing representation on high-level felonies under contracts, there will be a proportionate increase in the non-hourly compensation. The current compensation for a single high-level felony unit under the contract system will increase by \$1,800.00, or from \$25,300.00 to



\$27,100.00. For counsel providing representation to juveniles pursuant to contracts, the monthly rate of compensation will increase by 1.5%.

Driving While Impaired and Class A1 misdemeanors disposed of in the district court will increase from \$55 to \$60 an hour. (Note both classes currently are compensated at \$60 an hour when disposed of in the superior court.) For misdemeanor contract units, dispositions for Driving While Impaired and Class A1 offenses will entitle contractors to an additional half case credit—e.g., a DWI disposed of on March 1, 2021 will be worth 1.25 case credits.

The counties operating under the Uniform Fee Pilot will see the following fee increases based on the rate restoration:

- Class A – D felonies disposed of in district court will increase from \$425.00 to \$450.00; and,
- Class A – E felonies adjudicated and disposed in juvenile delinquency proceedings will increase from \$535.00 to \$575.00.

The new hourly rates are to be applied prospectively. In no case should it be applied retroactively. In other words, interim fee applications approved under the current rate will not be revisited even if the case is finally disposed or the date of the last appellate ruling is March 1, 2021 or later.

Case Type	Current Rate	New Rate	Date
Class A – D felonies paid by hourly rate (including satellite-based monitoring “bring back” hearings and reviews of NGRI determinations) whether disposed of in district or superior court	\$75	\$80	Cases finally disposed on or after March 1, 2021
Driving While Impaired offenses disposed of in district court	\$55	\$60	Cases finally disposed on or after March 1, 2021
Class A1 misdemeanors disposed of in district	\$55	\$60	Cases finally disposed on or after March 1, 2021
Potentially capital cases proceeding non-capitally at the trial level	\$75	\$80	Work done on or after March 1, 2021
Provisional counsel in capital cases	\$75	\$80	Work done on or after March 1, 2021
Non-capital appeals and non-capital postconviction where the most serious conviction was a Class A-D felony, and appeals of satellite-based monitoring hearings	\$75	\$80	Work done on or after March 1, 2021