

THOMAS K. MAHER
EXECUTIVE DIRECTOR
THOMAS.K.MAHER@NCCOURTS.ORG

TELEPHONE:
(919) 354-7200
FACSIMILE:
(919) 354-7201

**OFFICE OF
INDIGENT DEFENSE SERVICES
STATE OF NORTH CAROLINA**
www.ncids.org
123 WEST MAIN STREET
SUITE 400
DURHAM, N.C. 27701

COMMISSION
DAVID R. TEDDY, CHAIR
DOROTHY HAIRSTON MITCHELL, VICE-CHAIR
ART F. BEELER
BRIAN S. CROMWELL
JOSEPH N. CROSSWHITE
STAPLES S. HUGHES
DAVID MARK HULLENDER
R. CHANNING JONES
DARRIN D. JORDAN
LISA V. L. MENEFEE
CHRISTINE MUMMA
W. JAMES PAYNE
JAN PRITCHETT

MEMORANDUM

TO: Defense Counsel and Other Public Defense Stakeholders
FROM: Thomas K. Maher, IDS Executive Director
RE: Uniform Qualification Standards for Private Assigned Counsel
DATE: July 1, 2019

This memorandum will address the creation and implementation of new Indigent Appointment Regulations (“Uniform Plan”), which contain the qualification standards to be applied to private assigned counsel seeking to be included on local appointment lists. In addition to what is covered in this memorandum, IDS staff are available to discuss any concerns or questions and will be happy to meet with local bars or other groups to discuss the plan.

The new Uniform Plan revises the Model Plan that was adopted by the IDS Commission in March 2008. As IDS explained at that time, “[T]he Commission sought to balance the goals of consistency, equity, quality, and accountability with the need for local jurisdictions to have enough flexibility to accommodate local circumstances and needs.” The 2008 Model Plan was implemented through local jurisdictions’ initiative in contacting IDS and collaborating to make changes to suit local practice; however, many jurisdictions have continued to operate under older, outdated, or unauthorized appointment plans.

In 2017, the North Carolina Commission on the Administration of Law and Justice recommended that IDS develop uniform training requirements for each case type, as well as programs to foster them, to ensure that counsel have the necessary skills and abilities to handle indigent cases, and also that IDS review the requirements regularly and modify them as needed. Following these recommendations, in 2018 the NC General Assembly amended N.C.G.S. 7A-498.3 to require that IDS “develop a model appointment plan with minimum qualification standards for appointing private counsel by July 1, 2019.” The legislation further provides that districts have 18 months from July 1, 2019 to seek IDS’s permission to deviate from the new Uniform Plan and will be required to follow this plan unless IDS permits them to deviate. The legislation further directs IDS to review this plan for potential updates every five years.

IDS got input from lawyers who practice indigent defense and who serve on local indigent appointment committees through a survey of over 300 participants and a panel of attorneys reviewing the survey results and, from that, created the new Uniform Plan, which has been approved by the IDS Commission. As with the 2008 Model Plan, IDS seeks to ensure that clients are represented by counsel who have the training, experience, and skill needed to provide effective representation, while allowing reasonable changes to the plan to meet local needs.

In many respects, the new Uniform Plan is not significantly different from the 2008 Model Plan. IDS has posted both the new Uniform Plan and a redlined version showing how it changes the 2008 Model Plan. IDS has also posted a FAQ document to answer what we expect to be the most common questions about the new plan. These documents can be found on the IDS website at <http://www.ncids.org/IndigentApptPlans/ApptPlanLinks.htm?c=Indigent%20Appointment%20Plans>.

IDS determined that counsel who are already on most lists matching the lists covering the same areas of law in the new Uniform Plan do not need to reapply or meet new qualification standards to remain on the lists. However, to the extent that there are continuing education requirements to remain on a list, all counsel will need to meet those training requirements. Other significant changes include:

- For each list, attorneys will be required to review part of an orientation packet containing basic material to assist counsel in providing effective representation for the clients covered by that list. The packet will be posted on the IDS website with the documents mentioned above and will be updated as new or revised material is identified.
- Requirements for availability to clients have been detailed in order to meet the needs for which having a local office is a proxy. Attorneys must show that they can meet confidentially with clients and receive messages from them. While a local office and working means of communication will generally satisfy these requirements, they allow flexibility for attorneys who have worked out other means, such as office-sharing, that ensure access.
- Many of the lists have heightened observation, reading, and/or CLE requirements, and Lists 2 and 3 have supplemented jury trial requirements. Some attorneys who lack sufficient experience will be expected to serve as or have second chairs in trials if possible. Likewise, attorneys with less than one year experience will be expected to participate in a mentoring program, if possible. IDS intends to compensate lawyers for second-chair work and to work with local jurisdictions to develop these programs.
- List 2 requires two years of experience rather than one, based on input from attorneys reflecting that this was the minimum experience necessary to be able to handle felonies.
- List 4, Juvenile, and List 5, Special Proceedings, have been split to better address the differences in seriousness of charges and types of proceedings, respectively.
- Local indigent appointment committees will determine which CLE's meet these requirements. In areas in which adequate CLE opportunities are not available to counsel on the list, IDS will work to try to increase CLE opportunities for counsel.
- IDS seeks to have all counsel provide basic information on a Public Defense Portal, which will allow IDS to know who is providing representation, to communicate more

effectively with those lawyers, and to track when the number of lawyers willing to accept these cases drops in a given location. The system will also be developed to allow local committees to use it in tracking compliance with continuing CLE requirements and will allow committees to choose to use an application form that counsel can complete electronically (though it will still need to be submitted directly by the attorneys to the committees).

The legislation allows districts until January 2, 2021 either to accept the Uniform Plan as written or to seek modifications. At the end of that 18 months, the Uniform Plan will be in effect in districts that did not obtain approval to make changes. IDS has developed an online system for local indigent appointment committees to certify adoption of the Uniform Plan or to identify specific changes that they wish to make, which should help streamline the process of getting the plan in place throughout the state in the allotted time.

Again, IDS welcomes comments or questions about the Uniform Plan and/or its implementation by contacting Susan Brooks at Susan.E.Brooks@nccourts.org. Thank you for your interest in ensuring effective representation for indigent clients.