

### **5.3 Applying for Funding**

- A. Noncapital Cases
  - B. Capital Cases
  - C. Inmate Cases
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Since the creation of the Office of Indigent Defense Services (IDS) in 2000, the procedures for applying for funding have become more regularized. IDS has adopted form applications for funding, rates of compensation, and procedures for payment. This section reviews the basic procedures for applying for funding. Additional resources are available on the IDS website ([www.ncids.org](http://www.ncids.org)) under the links for “Information for Counsel” and “Information for Experts.”

#### **A. Noncapital Cases**

In non-capital cases (as well as non-criminal cases, such as juvenile delinquency cases), application for funding for expert assistance, investigators, and other related services is to the court. Compensation rates for expert witnesses paid from funds managed by the Office of Indigent Defense Services may not be higher than the rates set by the Administrative Office of the Courts (AOC) for expert witnesses paid from AOC funds. *See* G.S. 7A-498.5(f).

Two form applications for funding are available. A more detailed supporting motion should accompany the application. One form application contains standard compensation rates; the other requests a deviation from the standard rate. *See* AOC Form [AOC-G-309](#), “Application and Order for Defense Expert Witness Funding in Non-Capital Criminal and Non-Criminal Cases at the Trial Level” (Feb. 2015); AOC Form [AOC-G-310](#), “Defense Petition for Expert Hourly Rate Deviation in Non-Capital Criminal and Non-Criminal Cases at the Trial Level and IDS Approval or Denial (Feb. 2020). The forms state that they should be used in noncapital cases for all requests for funding for expert services except for certain flat fee services, such as lab tests. Counsel still must obtain prior approval from the court for funding for such services.

Because of the detail that counsel may need to provide, counsel should ordinarily ask to be heard *ex parte* on a motion for expert funding. *See infra* § 5.5, Obtaining an Expert Ex Parte in Noncapital Cases.

#### **B. Capital Cases**

In capital cases, requests for expert funding are governed by Part 2D of the IDS Rules. A “capital” case is defined as any case that includes a charge of first-degree murder or an undesignated degree of murder, except cases in which the defendant was under 18

years of age at the time of the offense and therefore ineligible for the death penalty. *See* IDS Rule 2A.1. Counsel first must apply to the Director of IDS or his or her designee for authorization to retain and pay for an expert. The director's designee for requests for expert funding in capital cases is the Capital Defender. Counsel must apply in writing, and the request should be as specific as the motion required under *Ake* and G.S. 7A-450(a). Applications to IDS for funding in capital cases are automatically ex parte and confidential. *See* IDS Rule 2D.2. Counsel should use the form request developed by IDS. *See* [Form IDS-028](#), "Ex Parte Request for Expert Funding: Potentially Capital Cases at the Trial Level" (May 2016).

If IDS does not approve a request for expert funding in a capital case, counsel then may apply to the court in which the case is pending; counsel must attach to the application a copy of IDS's notice of disapproval and a copy of counsel's original request. If application to the court is necessary, counsel should apply ex parte. Counsel must send to IDS a copy of any court order approving expert funds. If counsel discovers new or additional information relevant to the request, counsel should submit a new application to IDS before submitting a request to the court.

### **C. Inmate Cases**

In cases in which IDS provides counsel in cases pursuant to the State's obligation to provide inmates with legal assistance and access to the courts (*see infra* § 12.1A, Right to Appointed Counsel (2d ed. 2013)), requests for funds for experts go to IDS. The procedure is similar to the procedure for obtaining funds in capital cases, discussed above. *See* IDS Rule 4.6.