

This handbook provides information for any professional considering serving as an expert witness in indigent criminal defense cases, as well as best practices for NC criminal defense attorneys working with expert witnesses.

EXPERT WITNESSES IN NC CRIMINAL CASES

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FORENSIC RESOURCES

OFFICE OF INDIGENT DEFENSE SERVICES

ACKNOWLEDGMENTS

This expert witness guide would not have been possible without the foundation laid by Professor Deborah Weissman's "Expert Witnesses in U.S. Asylum Cases" Guide, which provided valuable insights and structure in developing this resource. We acknowledge the significant contributions of its authors, whose work has informed and guided our approach.

We also extend our gratitude to the legal professionals, subject matter experts, and practitioners who shared their expertise, experiences, and feedback throughout the development of this guide. Their input has been instrumental in ensuring its accuracy, relevance, and practical application.

Finally, we appreciate the efforts of all those who have contributed to the refinement and publication of this guide, including researchers, editors, legal professionals and UNC Pro Bono Project law students Chantrisse Howard, Colleen Malley, and Laila Robinson for their commitment to strengthening the role of expert witnesses in the justice system.

Thank you for your dedication and support!

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INTRODUCTION

The role of an expert witness is often pivotal in criminal defense cases. Expert assistance may make the difference between achieving a fair outcome for a defendant or facing the grave consequences of an unjust conviction. The primary purpose of this handbook is to highlight the vital contributions of expert witnesses in criminal defense cases and provide guidance for those interested in collaborating with attorneys in their cases.

While every criminal case is unique, the information in this handbook offers a foundation for those who may be considering serving as an expert witness in criminal defense matters for the first time, as well as for seasoned experts seeking additional insights into the process. With increasing scrutiny on the criminal justice system and the growing recognition of its complexities, more individuals have expressed interest in supporting defense teams. However, they may have questions about the qualifications required or feel uncertain about how their expertise can make a meaningful impact in these cases.

To support expert witness contributions, this handbook provides a comprehensive overview of the role and significance of expert assistance in criminal defense cases at the state level in North Carolina. The intended audience is experts and attorneys working on court-appointed and public defender cases. It outlines how expert witnesses can strengthen a case at all stages, from pre-trial preparation to trial testimony and, if necessary, appeals. The handbook also explains how experts establish their qualifications, the variety of roles they can play, and best practices for collaborating effectively with attorneys. Information in this manual should not be considered legal advice or official IDS Policy. Experts should read and become familiar with the IDS webpage for Experts and Investigators (<https://www.ncids.org/get-paid/experts-and-investigators/>) to find official IDS Rules and Policies in their most up-to-date version.

Additionally, this handbook offers practical recommendations for defense attorneys seeking to engage expert witnesses. Drawing on interviews with experienced defense attorneys, expert witnesses, and professionals considering this critical role, it identifies strategies for building strong working relationships between attorneys and experts. While this handbook complements existing legal resources and training materials for defense attorneys, it specifically focuses on fostering productive collaboration with expert witnesses to maximize their contributions to the case.

This handbook was developed with deep appreciation for the invaluable work of expert witnesses in criminal defense. It is our hope that the information provided will encourage more professionals to lend their expertise to defense teams, assist attorneys and experts in navigating the complexities of criminal cases, and ultimately strengthen the pursuit of justice for all individuals.

Rule 702 & Daubert

NC Rule of Evidence 702 establishes the standards for admitting expert testimony in court. It allows a qualified expert to testify in the form of an opinion or otherwise if their specialized knowledge helps the trier of fact, whether a judge or jury, to understand the evidence or resolve a fact in dispute. The rule sets four main requirements for admissibility: expert qualification, relevance, reliability, and the "fit" between the testimony and the case. Testimony must be directly relevant and assist the trier of fact in understanding the evidence or determining a fact at issue. The expert must demonstrate sufficient knowledge, skill, experience, training, or education in the relevant field to provide credible and valuable insights. Additionally, the court must assess the reliability of the expert's methodology and principles, considering factors such as testing, peer review, publication, and known error rates. Finally, the reliability of the applications of those methods to the case at hand must be demonstrated.

In 2011, NC Rule of Evidence 702 was amended to incorporate language influenced by the landmark *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) decision. These amendments explicitly require that expert testimony be based on sufficient facts or data, be the product of reliable principles and methods, and reliably apply those principles and methods to the facts of the case. The North Carolina Supreme Court clarified the application of the amended Rule 702 in *State v. McGrady*, 368 N.C. 880, 884 (2016), a pivotal case that emphasized the trial court's role as a gatekeeper. The court must ensure that expert testimony is both relevant and reliable before it is presented to the jury. For defense teams, understanding Rule 702 and the *Daubert* standard is crucial for both admitting expert testimony and effectively challenging the admissibility of unreliable expert testimony.

Role of IDS

Since 2001, the Office of Indigent Defense Services (“IDS”) has overseen legal representation for indigent defendants and others entitled to counsel in North Carolina. Created by an act of the N.C. General Assembly, the organization works daily to make real the Constitution’s right to counsel for those charged with crimes or who face significant deprivations to their liberty.

In this role, IDS determines the most appropriate and cost-effective methods for delivering constitutionally-mandated legal defense services in each of the state’s judicial districts. It is committed to recruiting North Carolina’s most talented attorneys to represent indigent defendants and to providing those attorneys with the resources they need to be effective, including through provision of constitutionally-mandated expert assistance.

The Office of Indigent Defense Services (IDS) supports North Carolina attorneys handling complex scientific evidence through its Forensic Resource Counsel Sarah Rackley Olson. Sarah collaborates with public defenders and private appointed counsel to enhance their understanding of forensic science, enabling them to achieve better outcomes in their cases.

As Forensic Resource Counsel, Sarah serves as a vital bridge between the legal and forensic science fields. She offers expertise on forensic disciplines, identifies suitable expert witnesses, and advises attorneys on interpreting and presenting complex forensic evidence in court. Through her work, she ensures that attorneys are equipped with the knowledge and resources needed to navigate the complexities of forensic science effectively.

Individual attorneys decide when to seek expert assistance and which experts to contact. Attorneys can access contact information for experts on the IDS forensic website (www.forensicsources.org). Attorneys working on court-appointed cases seek funding for expert assistance through the court or through the Office of the Capital Defender for potentially capital cases. Once authorization for this assistance has been attained and sent to the expert, the expert can begin work on the case. Payment for work authorized on court-appointed cases is through IDS Financial Services.

Deciding to Accept a Case/Initial Call

What should I discuss with the attorney before deciding whether to accept the case?

When you are contacted by an attorney to potentially work on a case as an expert witness, you should discuss whether a trial date has been set and when your work should be completed, you should clearly outline any upcoming scheduling conflicts, and you should discuss what work is expected of you. You should ask if there are any co-defendants, who they are, and ensure you are not working on the defense team of a co-defendant as this would be a conflict of interest. Ask the attorney(s) involved if you have any questions about conflicts.

You should also ask about venue – the location where the trial will take place – and where you will be expected to work as an expert witness. If you are a mental health expert, for instance, you might have to travel to meet the defendant at a different location than where the trial will take place, including meeting the client in custody.

If there is any professional or personal information that could be used to call into question your credibility or expertise, you should disclose that to the attorney before they hire you. This could include criminal charges or convictions (including DWIs), professional discipline or sanctions, failure to pass professional exams, failure to qualify as an expert witness in court, or other information. You should err on the side of over-disclosing so that the attorney can decide from the outset how to address the issue. If you wait until the eve of trial or until you are testifying, you will be doing a disservice to the attorney who hired you, the criminal defendant, and your future ability to work as an expert. If you have never testified, you should let the attorney know. This is not a bar to working as an expert, but it will alert the attorney to adequately prepare you for testimony.

Mental health experts should ensure they understand exactly what questions an attorney wants explored before agreeing to proceed. Competency assessments, diminished capacity, and other affirmative mental health defenses each require very different evaluations.¹ A request from an attorney to “do what you normally do” is not sufficient. Part of the expert’s work is helping give attorney some understanding of what questions might need to be explored and what a mental health expert can and cannot answer, since this may not be obvious to non-experts. Experts should confirm with counsel what legal framework/standards are applicable to the case at hand, since these definitions vary widely from jurisdiction to jurisdiction.

Make sure to outline to the attorney how long you expect this type of work to take, so that the attorney can request appropriate funding for your work. You can only be paid for the work that the attorney has secured funding for; if you work exceeds the hours that have been authorized, you will not be paid for those hours. As an expert, you will be expected to provide documentation of your professional qualifications with the attorney.² You should provide the attorney with a current CV and update the attorney if there are any changes that may affect your qualifications.

Through all steps of a case, the expert witness and the attorney should make it a priority to stay in regular communication with each other.³ If you decide to accept the case, you should receive an engagement letter from the attorney(s) outlining what work is expected of you.⁴

¹ Please see [Appendix A: Potential Mental Health Referral Questions](#) for examples of what kind of referral questions you may be asked to evaluate.

² Please see [Appendix B: Professional Documentation](#) for documentation of your qualifications that you may be expected to provide the attorney.

³ Please see [Appendix C: Attorney Contact Checklist](#) for a checklist of questions to ask the attorney(s) during your first phone call.

⁴ Please see [Appendix D: Sample Engagement Letter](#) for an example of the type of letter an attorney may send you upon your acceptance of the case. This letter may be adapted to explain the scope of work needed and expectations regarding client confidentiality in a particular case.

Confidentiality and Privilege⁵

Who is your client and what duty is owed to them?

You are a third party to this case. The defendant is not the expert's client in the sense of treatment responsibilities for medical or mental health providers. Work that is being undertaken for a legal purpose does not generate a treatment-based client, but a legal work-product based client, which carries with it its own set of confidentiality requirements. You have a duty to the defendant to produce an accurate report, and as someone brought on by the defense team, you have a duty of confidentiality. If you have questions about confidentiality at any time, please promptly contact the attorney(s) on the case.

What should you tell the defendant in the case?

If you meet a defendant in a case, the attorney or another member of the defense team who is known to the defendant should introduce you. If you are a mental health expert: advise the defendant that they are being evaluated, not treated, and that the information will be shared with the attorney and the court and is not confidential. Ensure that you have the defendant's consent to evaluate them.

If you are not a mental health expert, and you are asked to meet with the client, prior to the meeting you should discuss the goals of the meeting with the attorney. Clarify with the attorney what information that defendant must know and strategies for sharing that information.

What can you disclose about your cases?

As someone brought onto the case by the defense team, you should not disclose anything about the case or your work to anyone outside of the defense team, including through your use of artificial intelligence tools and software. You should not disclose information about the conclusions of your report. You also should not disclose to anyone who is not part of the defense team which case you are working on, facts of the case, information about the evaluation, or any other evidence or information about the case, aside from the minimal amount of disclosure required to elicit information from collateral sources or complete the expert's work.

Will my work be turned over to opposing counsel?

If you are called to testify as an expert witness, your report (and potentially other work) will be turned over to opposing counsel through the discovery process. The expert's report and possibly drafts of the report, correspondence between attorney and expert, raw data, and any notes the expert uses during testimony are potentially discoverable and should be prepared in a professional manner in anticipation of them being turned over to opposing counsel.

If the defense team decides that you will not be called as a witness, your work on NC state-level cases will not be turned over to opposing counsel. However, throughout the case you should anticipate that regardless of initial plans, it is possible that the defense team could need your testimony, and your work product should be prepared in a way that anticipates that it may be turned over to opposing counsel.

What if I am contacted by or subpoenaed by opposing counsel?

As a part of the defense team, you owe a duty of confidentiality to the defendant. Accordingly, you should not engage with opposing counsel or disclose any details of your work for the defense team with opposing counsel. If you are contacted by opposing counsel, notify the defense team immediately and discuss how to respond.

⁵ Please see [Appendix E: Expert Confidentiality](#) for a summary of information about confidentiality requirements.

A subpoena is an order from the court to produce documents or to appear before the court. If you receive a subpoena, you should also inform the defense team that you/your records have been subpoenaed and work together to respond to or oppose the subpoena.

What if I am contacted by an attorney representing a co-defendant requesting that you work on their case?

You should screen for conflicts before accepting a case. If an attorney representing a co-defendant contacts you about working on that defendant's case, you should let the attorney know that you are not available to work on the case.

Working with Counsel

What information will I receive about the case?

You will be provided with relevant parts of the discovery from the defense team. Discovery includes the complete file of all law enforcement agencies, investigatory agencies, and prosecutor's offices involved in investigating the case. The attorney and expert should communicate about which records the expert will receive as the expert will not need access to all discovery. Failure to communicate about discovery often leads to too much or too little discovery being provided to the expert. If there is specific information you know you need to complete the evaluation, please notify the attorney as early in the process as possible so that you can get the documentation in a timely manner.

If you need additional records about the defendant in order to complete your work, you should consult with the attorney about which records you need and formulate a plan to obtain those records, which may include assistance from the mitigation specialist in capital cases. The best practice is for the legal team to obtain and review the records and provide them to the expert.

What do I do about deadlines, communication, and clarification?

Experts will need to accurately communicate how much time they need to complete any given work product. While it is the attorney's responsibility to communicate and set deadlines, it is the expert's responsibility to give an accurate sense of how long their work will take. If the expert has any questions that come up about their role, they should contact the attorney as soon as possible.

What should I do if I haven't heard from the attorney in a while?

If you haven't heard from the attorney in a while, you should contact the attorney and request an update on the status of the case. Unfortunately, sometimes when a case is resolved, an attorney fails to notify the expert. It is helpful to check in periodically with the attorney so that you can communicate the status of your work and remain informed of the status of your case. Lack of communication is the cause of the most problems that experts and attorneys encounter when working with each other. Regular communication is essential for experts and attorneys. During your first phone call or meeting with the attorney, confirm the best way to reach them as well as discuss their expectations for communication.

Funding & Billing

Information in this section is relevant only in court-appointed or public defender cases, not in cases where the expert is privately retained.

How is funding obtained for the work performed in a case?

In a case with an indigent client, the attorney will submit a request for funding for the expert's work. The expert will need to inform the attorney about the work they will perform, how many hours are needed to complete the work, and the number of years the expert has been working in the field so that the attorney can request funding.

When can I start work on a case?

Do not begin work on a case until you have a signed authorization in hand. It will be signed either by a judge or by the Office of the Capital Defender. It will state the number of hours of work you are authorized to work and be paid for. Any work that exceeds the authorization cannot be compensated.

How much will I be paid for my work?

Indigent Defense Services (IDS), a primary source of funding for cases involving indigent clients, has a fee schedule, and individuals with more experience are given more pay. You will be compensated at half your hourly rate for travel time and time spent in waiting at the courthouse. Expert rates, fee and expense policies are available on the [IDS website](#).

How do I bill and what kind of detail do I need to provide in my invoices?

The [IDS website](#) has information for experts, including policies and procedures and forms and applications that provide specific information about billing. The initial steps an expert needs to take to get set-up for payment in the IDS system are in Appendix F. IDS encourages interim expert fee requests when either the interim fee application covers a time period of two months or more OR the interim fee application involves a payment amount of \$1,000 or more.

The expert's time should be billed by the tenth of the hour (every 6 min.), with time tracked on a timesheet. An expert should provide a sufficient level of detail for the tasks that they complete. An expert's timesheet should not reveal confidential information, but it should describe with sufficient detail so that anyone reviewing the invoice understands what tasks performed and its relevance. Additional information about billing, including an example timesheet is in Appendix G.

Will I receive a 1099 Form from IDS?

If you are paid more than \$600 by IDS during the calendar year for your work as an expert, you will receive a 1099-MISC Form. IDS does not withhold taxes. The expert is responsible for the tax implications of working as an independent contractor for IDS.

What if I need additional hours to complete work on the case?

If you require additional hours to complete work that you are doing on the case, contact the attorney before you have exhausted funding so they can make an additional funding request or so that you can prioritize how to complete the remaining work. Do not exceed the number of hours authorized. You will not be paid for hours/expenses that exceed the authorization.

Report Writing

Should a report always be produced?

No, reports aren't always necessary so be sure to wait for the attorney's instruction before producing a report. A report must be prepared in any case in which you will testify. It is critical to communicate with the attorney so you are aware of any deadlines if a report is needed.

What should be included in a report?

If an attorney requests a report, your report should be based on accurately applied and reliable methods and principles. Make sure to include all of the sources you relied on when forming your opinion about the case, including information about instruments used, sources you relied on when forming your opinion about the case, and other relevant citations to explain your work. You should tailor your report to the individualized details and circumstances of the case and avoid using boilerplate (i.e., generic) language. If any information regarding what the attorney is expecting of you remains unclear, be proactive in following up and asking questions.

Is it acceptable to use AI in the generation of my report?

Attorneys have rules of professional responsibility that govern the use of artificial intelligence in their work, so they need to be aware of when and how AI is being used by an expert. Prior to using artificial intelligence in your work, you should discuss the use with the attorney to ensure that use complies with confidentiality and other requirements. For example, uploading any private or confidential information to an open-source AI model like ChatGPT is not permissible for legal teams. Additionally, you remain fully responsible for the entire content of your work product, including your report. Nothing should be present in your report that has not been reviewed and adopted by you.

Should I collaborate with the attorney during the process of drafting my report?

You should work collaboratively with the attorney to define the scope of your work and what type of report is needed in a case. However, your conclusions should not be influenced by the attorney. The attorney should not request you draw a conclusion that does not comport with your professional opinion. Similarly, the attorney should not request you form an opinion beyond the scope of your expertise.

What is the process of editing my report?

The attorney will establish the expectations on how your report will be edited, if at all.

Preparing to Testify

What should you discuss with the attorney prior to testifying?

The attorney should prepare you to testify. You and the attorney should prepare enough together so that you have a good idea of what questions the attorney will ask you on direct examination and the attorney has a good idea of what your answers to those questions will be. You and the attorney should also discuss what questions you might expect to be asked on cross-examination.

What is cross-examination like?

During cross-examination, opposing counsel (the prosecutor) may cross-examine you to seek clarification on points you made on direct exam. Also, they may attempt to undermine your testimony. The opposing counsel will ask you a series of questions, most of which will be leading questions having “yes-or-no” or short phrase answers. If you feel that a yes-or-no answer is insufficient, you can answer the question and then state that you wish to explain your answer.

How can I practice/prepare for testifying? ⁶

The attorney should organize a mock direct- and cross-examination. If it is not possible to have a mock testimony session, the attorney should coordinate a phone call to describe in detail what to expect and how to prepare, including:

- Exact location of testimony – some courthouses are located in multiple buildings
- What the courthouse and courtroom will look like
- Expectations for your arrival time
- What you can and cannot bring into the courthouse, including electronic devices
- What you should and should not have with you on the stand during your testimony
- Where you will sit before and after the attorney calls you to the stand. You may be required to be sequestered outside of the courtroom during other testimony in the case.

What information will I be asked to share in my testimony?

Generally, the information you will be asked to provide in testimony will resemble the information you provide in a report.

What are some questions that could be asked?

You will be asked about your qualifications and training. Most likely you will be asked about your methodologies and procedures. Opposing counsel may try to call your qualifications or practices in doubt. Discuss any potentially disqualifying information with the attorney prior to them hiring you on the case and again before testifying.

What should I expect the day of the hearing?

The attorney should provide clear and detailed instructions on locating the correct courtroom. Make sure the attorney knows that you have arrived. To help you get oriented, they should introduce and identify the key individuals in the room, such as the judge, clerk, and client. After your testimony, the attorney should let you know when to expect any additional follow-up.

⁶ See [Appendix B](#) for sample questions your attorney (or opposing counsel) might ask to establish (or undermine) your credibility and further tips on preparing to testify.

Self-Care

Why is self-care necessary as an expert?

Indigent defense cases can involve disturbing or sensitive details that may be difficult to digest or process. Due to the sensitive nature of the matters, you will be working on, you are at a risk of experiencing compassion fatigue and vicarious trauma. To combat compassion fatigue and vicarious trauma, you should be intentional about practicing self-care.

What is compassion fatigue?

Compassion fatigue is a type of burnout that affects those who experienced continuous exposure to traumatic stories and can result in deteriorated physical and/or emotional wellbeing.

What is vicarious trauma?

Vicarious trauma results from empathetic engagement with traumatic material, causing permanent disruption of an individual's cognitive "schema."

How should I practice self-care?

Self-care looks different for everyone. Generally, self-care involves taking time for yourself away from work or responsibilities so that you can ultimately perform your best work. Self-care may require you to limit the types of cases you accept. If you choose to do this, inform the attorney at the outset of any case-type limitations. Self-care is NOT selfish...it's necessary! To be the best expert witness you can be, you must "put on your own oxygen mask before helping others."

Examples of self-care

- Exercising
- Spending time in nature
- Completing your hobbies
- Reading for leisure
- Creating a healthy work environment and setting boundaries

Appendix A – Potential Mental Health Referral Questions

1. Is the client competent to assist in their defense?

- Is the client aware of the charges they are facing?
- Does the client seem to understand the court process?
- Can the client help me defend them in this case?

2. Does the client have an intellectual disability?

- What is my client's IQ?
- Does my client have significant adaptive deficits?

3. Was the client's capacity to commit the crime diminished by alcohol intoxication/withdrawal, drug intoxication/withdrawal, mental illness, or some combination of these?

- What symptoms, if any, of intoxication, withdrawal, or mental illness was the client experiencing at the time of the crime?
- Did those symptoms impact his/her actions in any way?
- Was the client able to make and carry out plans?
- Was the client able to form the specific intent necessary to commit this crime?

4. Was the client suffering from a mental or emotional disturbance at the time of the crime?

5. Does the client have a neurological impairment including a brain injury that affected him or her at the time of the crime?

6. Was the client insane or have diminished capacity at the time of the crime?

- Did the client have mental health symptoms at the time of the crime?
- If yes, did those symptoms prevent them from recognizing the nature and quality of their acts?
- Even if the client understood the nature and quality of their acts, were they incapable of understanding the wrongfulness of their behavior because of mental health symptoms?
- Do the client's mental health symptoms explain why they did what they did?

7. Does the client have mental health or cognitive issues which might have caused them to be easily led by co-defendants or to falsely confess?

8. Does this client's history reveal other potential mitigation issues such as abuse history, neglect, low cognitive functioning, fear, etc.? What treatment history has my client had?

Appendix B – Professional Documentation & Testimony Preparation

As an expert witness you will be asked to produce an up-to-date CV. Depending on your specialty and what information is in your CV you may be asked to also provide the information below. Additionally, this same information can be used to present your qualifications to the court on direct examination. Experts should modify this list of items/questions so that it is specific to their qualifications and share it with the attorney to use when the attorney presents their testimony in court.

- What position do you currently hold and how long have you held that position?
- Describe the subject matter of your specialty and any further specializations within your field.
- What academic degrees do you hold, from where, and when they were obtained?
- What licenses do you hold in your field, in which state(s) and how long have you been licensed?
- Describe your specific employment duties and experiences.
- Describe your teaching or lecturing in the relevant field, including dates and location of teaching.
- If you have publications in the field, provide their titles and date of publication.
- Are you a member of any professional societies/organizations? Describe any special positions within them, and requirements for membership and advancement within each of these organizations.
- What honors, acknowledgments, and awards have you received?
- How many times testimony has been given in court as an expert witness in this field.
 - Provide case names and/or transcripts of testimony if available to the attorney
 - How has your testimony been treated in the past? Have you ever not been qualified as an expert? If so, why not?
- Any information (either personal or professional) that may be used to call your credibility into question.

Appendix C – Checklist for First Contact with an Attorney

- ✓ **Have your CV ready to share with the attorney.**
- ✓ **Check for conflicts of interest:**
 - Ask about co-defendants and ensure you are not already associated with the co-defendant's defense team.
- ✓ **Ensure you understand confidentiality requirements.**
- ✓ **Clarify case details and expectations:**
 - Confirm whether a trial date has been set and establish deadlines for your work.
 - Outline any personal scheduling conflicts upfront.
 - Discuss the scope of the work expected (e.g. types of assessments or reports).
 - Clarify what documentation you will be given to complete the assessment or report.
- ✓ **Confirm venue and work locations:**
 - Determine where the trial will take place and whether travel is required (e.g., meeting the defendant at a different location).
- ✓ **Understand legal frameworks and evaluation requirements:**
 - Ensure clarity on the specific questions or legal issues the attorney needs you to address.
 - If you are a mental health expert, ensure that you understand the specific referral questions the attorney would like addressed.
 - Educate the attorney on what your role as an expert allows you to explore and any limitations.
 - Confirm applicable legal standards for the jurisdiction, as these vary.
- ✓ **Discuss information that could be used to disqualify you or requiring additional preparation:**
 - If you have any professional discipline or sanctions, a history of failure to pass professional exams, failure to be qualified as an expert witness in court, or any similar information be prepared to disclose this.
 - If you have any criminal charges, convictions (including DWIs), or other similar information be prepared to disclose this.
 - If this is your first time testifying, let the attorney know so that they can adequately prepare you.
- ✓ **Discuss Time and Funding Requirements:**
 - Provide an estimate of how long the work will take to help the attorney secure appropriate funding.
 - Discuss what happens if re-testing is needed (for any reason) and how this may impact the funding required.
- ✓ **Discuss Ongoing Communication Expectations:**
 - Confirm the attorney's expectations for communication throughout the case.
 - Confirm the best way to contact the attorney in the event you need more information, or any issues come up.
- ✓ **Ask any remaining questions you have.**
- ✓ **If needed, ask for a deadline when you must tell an attorney whether you agree to serve as an expert.**

Appendix D – Sample Engagement Letter

[DATE]

RE: XX CRS XXXX

Dear [NAME]:

Thank you for agreeing to work as an expert in the case State v. DEFENDANT.

I am requesting that you perform [generic description of the type of work requested, including the type of mental health evaluation requested, if appropriate].

As I am sure you are aware, all work you do in this matter and all information you receive about this case is confidential and privileged pursuant to the attorney-client and work-product privileges. These privileges cover all oral discussions and written communications between us. Consequently, if prosecutors, law enforcement personnel, or investigators working for the State contact you regarding this case, you may not assist them. Nor may you reveal that the reason you cannot assist them is that you are working for me, as that information is privileged as well. If you are contacted about this case by anyone outside my office, please inform me and do not rely on the representations of anyone who claims that they are permitted to discuss this case with you. This obligation of confidentiality does not conclude upon the resolution of this case in court. Thus, absent my express authorization, you may not ever reveal your work in this case, including during discussions at conferences or other professional gatherings. Of course, should you become a witness in the case, your name would be disclosed to the State. If at that point you are contacted by the State, please refer the request to me without discussing the merits of the case as there may be limits to the topics about which they are permitted to question you.

I have obtained an authorization for your work [from the Court or from IDS if this is a potentially capital case] and am enclosing a copy of that authorization. You should keep track of all hours worked on this case and any expenses incurred and prepare an invoice as directed on the IDS website. You must ensure that your work and expenses in this case do not exceed the amount authorized. If you are approaching the maximum amount authorized and feel that you need an additional authorization to complete work on this case, you must contact me before you exceed the authorization. Any work that exceeds the authorization will not be compensated. The relevant [Expert Fee and Expense Policies](#) and forms are linked and are available on the IDS website (www.ncids.org).

During the course of your work on this case I will be providing to you copies of reports or other case-related documents for your review. If there are additional materials that you need access to in order to form an opinion, please let me know specifically what items you need.

Please contact me when you have completed your evaluation to schedule a time to discuss your expert opinion. Please do not draft a report prior to discussing your findings with me. If a written report is needed, I will ask you to prepare a written report and will give you a deadline. A timely and complete report must be prepared if requested. If your testimony at a hearing or at trial is needed, I will inform you of the date when your testimony is needed. It is essential that you make yourself available if testimony is needed. If you know of any potential conflict dates, let me know as soon as possible. I will try to keep you informed of important case developments, such as resolution of the case. Please contact me at any time if you have questions about the status of the case.

Please do not hesitate to contact me for any reason. I look forward to working with you in this matter.

Sincerely, Attorney for Defendant

Appendix E – Sample Expert Confidentiality Agreement⁷

Please review the following statements regarding confidentiality as an expert:

I understand that as an expert in a criminal case, I am a third party and that the work I am undertaking is for a legal purpose. The defendant is a legal work-product based client and not a treatment-based client and I have a duty to the defendant to produce an accurate report.

I affirm that I have appropriately screened for conflicts before engaging in the case. I understand that if a co-defendant's attorney contacts me to work for them, I must tell them I am unavailable to work on their case.

I understand, agree, and affirm that as an expert brought on by the defense team, I will uphold attorney-client privilege, which requires confidentiality with respect to any communication or information that I may obtain from an attorney or the defendant. I affirm that I will not disclose any conclusions from my report, facts of the case, or the like to anyone not on the defense team.

I understand and affirm that if I ever have questions about confidentiality, the goals of meeting with a defendant, or anything else I will immediately contact the defense attorney(s).

If evaluating the defendant, I understand that I should gain defendant's consent to evaluate them, that I shall advise the defendant that my role is to evaluate them and not treat them, and that the information shared with me will be shared with defendant's attorney and the court and is not confidential.

I understand that any work product produced throughout the case may be turned over to opposing counsel, even if I do not testify as an expert witness. Accordingly, I agree to prepare any and all reports, drafts of reports, correspondence, raw data, and notes in a professional manner in anticipation of them being turned over to opposing counsel.

I understand and affirm that if I am contacted by opposing counsel or subpoenaed by opposing counsel, I will immediately notify the defense team and work with them to respond.

Signature of expert

⁷ This guide draws upon and acknowledges the invaluable work of Professor Deborah M. Weissman in *Expert Witnesses in Asylum Cases: A Handbook*

Appendix F – Payment Set-Up



Are you new? Has your information changed?

**If you are an expert or investigator,
follow these simple steps to be paid for your work:**

Step 1: Establish yourself as a supplier (vendor) in the new North Carolina Financial System (NCFS) by completing the [NC Substitute W-9](#) form.*

- This form should be mailed to Indigent Defense Services, c/o Shannon Simmons, PO Box 2448, Raleigh, NC 27602. **OR** fax securely to 919-890-1922.
- Setup is typically done within five business days from receipt of the form.
- You will receive notification once you have been set up in NCFS; then you may proceed to Step 2.

***IMPORTANT:** Complete an [NC Supplier Change Form](#) anytime one or more of the following changes:

- Tax identification number (hereby "TIN"); or
 - Business or law firm name; or
 - Business address; or
 - Personal name (marriage, divorce)
- The information you provide on the Sub W-9 must match IRS records.

Step 2: Avoid delays in compensation for your services; fill out the new [ePay/direct deposit form](#).

- Electronic payment forms cannot be submitted until Step 1 is complete.
- This form must be sent SECURELY to: ncfsepay@ncosc.gov
- Only the OSC can perform this setup.

Appendix G – Submitting Your Fee Application

The requirements for submitting your fee application differ slightly from non-capital cases to potentially capital cases. The application will be submitted via email. Refer to the [website](#) to use the correct fee application form and email address.

To make sure it doesn't get returned, your fee application should be filled out accurately and completely.

For information about reimbursement rates, please see the [website](#).

Non-Capital Case Fee Application Procedure:

When it is time to bill for your work, please combine these documents into a single pdf:

- ✓ Fee Application Form (Part IV of the [AOC-G-309](#) form that the judge signed)
 - Please give special care to a few fields that are often filled out incorrectly:
 - For fee applications where your funding was authorized by the court, on the AOC-G-309, make sure all 3 signatures (from the attorney, judge, and from you) are there.
 - Make sure the authorization amount is included in Section II.
- ✓ Detailed Timesheet
- ✓ Receipts (if any)

Please submit the pdf via email to: judicial.ids.experts@nccourts.org

Potentially Capital Case Fee Application Procedure:

For potentially capital cases where your funding was authorized by the Office of the Capital Defender, please submit the following as one pdf when it is time to bill for your work:

- ✓ Fee Application Form (The [IDS-003 Form](#))
 - Please give special care to a few fields that are often filled out incorrectly:
 - The Date Work Began and Date Work Ended For This Requested Fee matches the beginning dates and ending dates on the timesheet
 - Out of Pocket Expenses should include all expenses, even mileage reimbursement
 - Please remember to sign the form where it says signature of applicant
 - Do not enter any information into Section III, Award of Payment
- ✓ Detailed Timesheet
- ✓ Receipts (if any)
- ✓ A copy of your authorization

Please submit the pdf via email to: idsfeeapplications@nccourts.org

Timesheet Tips:

- Time should be tracked by the tenth of the hour (i.e., every 6 minutes)
- Your timesheet needs sufficient detail regarding your services to demonstrate that the claim for compensation is reasonable. Time sheets that are insufficiently detailed or include generic descriptions such as "review file," "review discovery," "digest records," "research" without providing additional details will be returned. For example: review discovery. As is, this is incomplete. You should list which discovery you reviewed along with page numbers (Instead, list "reviewed crime scene videos #1-8").

- Use columns to list separately dates of service, hours worked in tenths, a brief description of services, miles traveled (with dates and places traveled), and other costs
- There should be no confidential information in the timesheet, such as witness names or the content of a witness's statement.
- Your timesheet must be typed. IDS cannot accept handwritten timesheets.

Here's an example:

DATE	DESCRIPTION	HOURS	MILES	RATE/MILE	OTHER COSTS	OTHER DESCRIPTION
	Jail meeting with defendant, travel					
7/22/2023	Greensboro to Raleigh	6.00	160.00	0.63	\$ 101.56	hotel
7/23/2023	review case with attorney	3.40				
	reviewed and organized discovery (bodycam videos					
7/24/2023	4-6)	6.70				
7/25/2023	updated witness records	4.20				
	Jail meeting with defendant, travel					
7/26/2023	Greensboro to Raleigh	8.10	160.00	0.63	\$ 101.56	hotel
7/27/2023	locate witness	1.10				
7/28/2023	witness interview	2.10				
	drive Greensboro to Chapel Hill, team meeting, reviewed case file (witness					
7/29/2023	statements from Mar-June)	4.50	76.00	0.63		
7/30/2023	work on timeline	7.40				
		Total hours	Total Miles		Total Other Costs	
		43.50	396.00		\$ 203.12	