

REGULATIONS FOR APPOINTMENT OF COUNSEL IN THE 16A JUDICIAL DISTRICT, SCOTLAND AND HOKE COUNTIES, IN CASES UNDER THE INDIGENT DEFENSE SERVICES ACT

I. Applicability

A. Generally

These regulations are issued pursuant to Rule 1.5 of the Rules for the *Continued Delivery of Services in Non-Capital and Non-Criminal Cases at the Trial Level*. They apply to all non-capital criminal and non-criminal cases in the trial division in the 16A Judicial District in which the provision of counsel is subject to the Indigent Defense Services Act of 2000 (G.S. 7A-498 through 7A-498.8) (hereinafter “IDS Act”).

B. Exceptions

1. In cases in which the defendant is charged with first-degree murder, an undesignated degree of murder, or an offense filed contemporaneously with or subsequently joined with such murder charges, the court shall appoint the IDS Office, which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Capital Cases*. However, the court shall appoint the Public Defender in the 16A Judicial District in cases in which the defendant or respondent was 17 years of age or younger at the time of the alleged offense and is not eligible for the death penalty; in such cases, the Public Defender shall appoint an attorney from his or her office or a private attorney from the appropriate list.

2. In cases in which a person is entitled to appointed counsel pursuant to G.S. 7A-451 with respect to appeal to the appellate division from an adverse ruling in the trial division, the court shall appoint the Office of Appellate Defender, which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Non-Capital Criminal Appeals and Non-Criminal Appeals*. The only exception to this procedure is in cases in which a death sentence has been returned, where the appellate entries made by the court shall reflect that appeal is taken by operation of law and that the Director of the IDS Office has appointed the Office of Appellate Defender. *See* Rule 2B.2(a) of *Rules for Providing Legal Representation in Capital Cases*.

II. Administration of Regulations

The Public Defender in the 16A Judicial District (hereinafter “Public Defender”) is responsible for administering these regulations. The Public Defender shall coordinate with the court and the local bar to ensure that these regulations are applied in a fair and impartial manner.

The Public Defender shall designate a member of his or her staff as Administrator of these regulations to keep current the lists of attorneys eligible for appointment and perform such other duties as the Public Defender may determine.

III. Determination of Entitlement to Counsel

In each case subject to these regulations the court shall determine whether a person is entitled to have counsel appointed to represent him or her in the particular case. In cases in which the person must be indigent to receive counsel, the court shall determine indigency. When these regulations describe the functions that a court performs, the term “court” includes the clerk of superior court.

Entitlement to the appointment of counsel begins as soon as practicable after the indigent is taken into custody or is served with the warrant, notice, or other initiating process. Whenever a person is entitled to the appointment of counsel but the appropriate court is not in session and will not be in session within the next 48 hours, the Clerk of Superior Court shall make a determination of indigency and shall appoint counsel as provided by G.S. 7A-452(c) and these regulations. Appointment of counsel with respect to a particular charge or proceeding shall continue until final disposition of that charge or proceeding at the trial level, including all critical stages thereof as set forth in G.S. 7A-451(b), unless the attorney is relieved of his or her appointment by the court.

IV. Appointment of Public Defender’s Office

A. Cases Covered

Upon determining that a person is entitled to counsel in the matters listed below, the court shall appoint the Public Defender to represent the person except if the Public Defender has a conflict of interest.

1. Defendants in criminal cases;
2. Defendants charged with contempt in child support enforcement matters;
3. Persons responding to show cause orders for contempt of court;
4. Juveniles in cases in which the juvenile is alleged to be delinquent;
5. Respondents in involuntary commitment matters; and
6. Parent-respondents in abuse, neglect, and dependency cases and in termination of parental rights cases.

Upon being appointed as counsel, the Public Defender shall assign the case to an assistant public defender or to private counsel as provided in Article V, below.

B. Notice to Client

In cases assigned to the Public Defender, the court shall provide instructions to the

client on contacting the Public Defender. If the court appoints the Public Defender for an incarcerated person via audio-video transmission, the Public Defender shall provide such notice to the person.

C. Conflicts

If the court at the time of determining a person's entitlement to counsel in any of the matters listed above, finds that the public defender's office has a conflict of interest, or the public defender after being appointed determines that his or her office has a conflict of interest, the court shall appoint private counsel as provided in Article VI, below.

D. Preliminary Determination

Prior to the court's determination of entitlement to counsel in any of the matters listed above, the Public Defender may pursuant to G.S. 7A-452(a) tentatively assign an attorney from his or her office to represent a person whom the Public Defender determines is entitled to counsel. To help assure the prompt appointment of counsel for in-custody persons, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the Public Defender pursuant to G.S. 7A-453(a). Tentative appointments by the Public Defender under this provision are subject to later approval of the court.

V. Assignments by Public Defender

A. Determination

As soon as practicable after learning of an appointment, the Public Defender shall determine whether to assign the case to an assistant public defender or to private counsel. Subject to standards approved by the Office of Indigent Defense Services, the Public Defender may assign cases to private counsel based on, among other factors, the caseloads of the assistant public defenders in his or her office. If the Public Defender assigns a case to private counsel, he or she shall record the reasons for doing so.

B. Conflicts

If, after being appointed by the court and before interviewing the client, the Public Defender finds that his or her office is unable to handle a case because of a conflict, the Public Defender may reassign the case to a private attorney from the appropriate list in accordance with the regular rotation in these Regulations and any criteria approved by the Office of Indigent Defense Services. If the Public Defender has appeared in the case before discovering a conflict, the Public Defender shall also file a motion to withdraw with the court.

C. Order of Appointments

1. The Public Defender shall maintain in his or her office lists of attorneys, duly qualified pursuant to Articles VIII and IX below, to handle cases appointed by the Public Defender. Such lists shall be made reasonably available to the public upon request.

2. If the Public Defender finds that the case should be assigned to private counsel, the Public Defender shall assign an attorney from the appropriate list. No appointment shall be made by the Public Defender of an attorney whose name does not appear on one of the lists on file with the Public Defender's Office. In exceptional circumstances, the Public Defender may appoint an attorney who is not on the list with that attorney's consent.

3. The Public Defender shall assign attorneys in a strict rotation in the sequence in which they appear on the list except as permitted by these regulations. The Public Defender may appoint an attorney who is not next in sequence if an attorney is unavailable, an attorney has a conflict, another attorney is representing the particular client, or the interests of justice require the appointment of a specific attorney instead of the next available attorney. If the Public Defender passes over the name of an attorney, the Public Defender shall return to that attorney for the next appointment, unless the attorney has declared himself or herself unavailable to handle the case, in which instances that attorney will be appointed when his or her name again appears in the normal sequence of appointments.

4. The Public Defender shall make a record of appointments and make the same reasonably available to the public on request. If the Public Defender appoints an attorney who is not next in sequence or not on a list, the Public Defender shall record the reasons for doing so.

D. Notice

If the Public Defender assigns an assistant public defender to a case, the Public Defender shall enter that information in the Case Management System. If the Public Defender assigns a case to private counsel, the Public Defender shall furnish a notice of appointment to the attorney by fax, e-mail, or letter and shall enter the appointment information in the Case Management System. The Public Defender shall also file the notice of appointment of private counsel with the Clerk of Superior Court and shall provide a copy to the defendant or respondent and to the prosecutor's office. Upon assigning a case to private counsel, the Public Defender shall furnish to the client instructions about contacting his or her attorney.

E. Withdrawal

Once the Public Defender has issued a notice of appointment of private counsel and filed it with the clerk, only the court may permit the attorney to withdraw. If the court permits the attorney to withdraw, the court shall assign the case to a private attorney from the appropriate list.

F. Multiple Counsel

1. In assigning cases to private counsel, the Public Defender shall appoint the same attorney on all pending matters concerning the defendant or respondent if the attorney is on the appropriate list. Where a criminal defendant is discharged after a finding of no probable cause in District Court but is later indicted in Superior Court, to the extent possible, the attorney appointed in District Court should be appointed to represent that defendant on the charge in Superior Court if he or she is qualified to do so under Article IX of these regulations.

2. If an attorney is appointed to represent a client on one matter, and the attorney learns that the client requires representation on another matter for which the attorney is not on the appropriate list, the attorney shall notify the Public Defender. If requested by the Public Defender, the attorney shall move to withdraw from the case so that the Public Defender may appoint all of the matters to other counsel who is on all of the appropriate lists.

3. If no single attorney is on all of the appropriate lists, the attorneys appointed to represent the client shall consult with each other to assure that the client's interests are protected.

G. Requests for Substitution of Counsel

For good cause, the Public Defender may request that a judge of a court of competent jurisdiction replace counsel previously appointed by the Public Defender with new counsel selected by the Public Defender.

VI. Appointment of Private Counsel by Court

A. Cases Covered

For persons entitled to counsel in the matters listed below, the court shall appoint counsel in accordance with the procedures described in this article:

1. Defendants or respondents in cases specified in Article IV, above, only if the court determines that the Public Defender has a conflict;
2. Respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes;
3. Minors requesting judicial waiver of parental consent to abortion;
4. Defendants in non-capital motions for appropriate relief in which the court has found that sufficient grounds exist so as to entitle the defendant to a hearing;
5. Persons found to be material witnesses by the court;
6. Respondents in proceedings for the provision of protective services according to Chapter 108A, Article 6, of the General Statutes;
7. Respondents in proceedings for sterilization under Chapter 35, Article 7 (sterilization of persons mentally ill and mentally retarded);

8. Persons against whom execution is sought under Chapter 1, Article 28 of the General Statutes and in any civil arrest and bail proceeding under Chapter 1, Article 34 of the General Statutes; and
9. Any other person who has a right to appointed counsel that is not otherwise described in this article or in Article IV, above.

The Indigent Defense Services Act and these regulations do not cover assignments of counsel for juveniles alleged to be abused, neglected, or dependent.

B. Order of Appointments

1. The clerk of superior court shall maintain in his or her office master lists of attorneys, duly qualified under Articles VIII and IX, to handle cases appointed by the court. The Public Defender, in consultation with the Committee on Indigent Appointments, shall prepare and provide to the clerk such master lists, which shall be made reasonably available to the public upon request. The Clerk of Court shall distribute copies the relevant lists to each courtroom and the court shall assign attorneys from such lists as provided below.

2. If the court determines that a person is entitled to counsel, the court shall assign an attorney from the appropriate list. No appointment shall be made by the court of an attorney whose name does not appear on one of the master lists on file with the Clerk of Superior Court.

3. The court shall assign attorneys in a strict rotation in the sequence in which they appear on the list except as permitted by these regulations. However, the court has inherent authority to appoint an attorney who is not next in sequence on the list if an attorney is unavailable, an attorney has a conflict, another attorney is already representing the particular client, or the interests of justice require that a specific attorney be appointed rather than the next available attorney. If the court passes over the name of an attorney for a reason other than the attorney's unavailability, the court shall return to that attorney for the next appointment to the extent administratively feasible.

4. The court shall record on a form provided by the Public Defender the appointments it makes and shall provide the record to the Public Defender on a monthly basis. If the court appoints an attorney who is not next in sequence, the court shall record the reasons for doing so. This record shall be made available to the public upon request to the Public Defender.

D. Notice

Upon assigning a case to private counsel, the court shall furnish the notice of appointment to the attorney and shall furnish to the client on a form provided by the Public Defender instructions about contacting his or her attorney. If the court appoints a private attorney for an incarcerated person via audio-video transmission, the court shall provide notice to the person about contacting his or her attorney.

E. Multiple Counsel

1. In assigning cases to private counsel, the court shall seek to appoint the same attorney on all pending matters concerning the defendant or respondent if the attorney is on the appropriate list. Where a criminal defendant is discharged after a finding of no probable cause in District Court but is later indicted in Superior Court, to the extent possible, the attorney appointed in District Court should be appointed to represent that defendant on the charge in Superior Court if he or she is qualified to do so under Article IX of these regulations.

2. If an attorney is appointed to represent a client on one matter, and the attorney learns that the client requires representation on another matter for which the attorney is not on the appropriate list, the attorney shall notify the court. The court may remove the attorney from the case so that the court may assign all of the matters to other counsel who is on all of the appropriate lists.

3. If no single attorney is on all of the appropriate lists, the attorneys appointed to represent the client shall consult with each other to assure that the client's interests are protected.

VII. Committee on Indigent Appointments

A. Establishment of Committee

There is hereby established the Committee on Indigent Appointments (hereinafter "Committee") to assist the Public Defender with the implementation of these regulations. The Public Defender shall serve as chair of the Committee and shall consult with the Committee as described herein. The failure of any of the appointing authorities to make the appointments described below, or the failure of the Committee to meet or do any of the things authorized by these regulations, shall not preclude the Public Defender from performing any of the duties or taking any of the actions authorized by these regulations.

B. Membership of Committee and Terms

1. Henceforth the appointees who will serve on the Committee will be designated by category as follows:

- a. One 16A Public Defender District position designated as a Senior Resident Judge position, to be appointed by the Senior Resident Judge.
- b. One 16A Public Defender District position designated as a District Court Judge position, to be appointed by the Chief District Court Judge.
- c. One position designated as a 16A Public Defender District Bar position, to be appointed by the President of the 16A Judicial District Bar.
- d. One position designated as a Public Defender position, to be appointed by the

Public Defender.

2. After the initial Committee is formed, any vacancy occurring will likewise be filled by appointment by the appropriate person.

3. Members of the Committee shall be appointed for terms of two years.. Any member who resigns or becomes otherwise ineligible to continue serving as a member should be replaced for his or her term as soon as possible.

C. Qualifications

Other than the Public Defender or assistant public defenders, members of the Committee shall be attorneys who:

1. Have practiced in one or more of the areas covered by the appointment lists for not less than 2 years in the 16A Public Defender District (Scotland and Hoke Counties); and
2. Are knowledgeable about practicing attorneys in the 16A Judicial District.

D. Meetings

1. Meetings of the Committee shall be called by the chair on reasonable notice. The chair shall call a meeting of the Committee at least once a month until the procedures outlined herein are fully implemented and thereafter shall call a meeting as often as necessary to dispatch the Committee's business but not less than semi-annually.
2. A majority of the Committee must be present at any meeting in order to constitute a quorum. The Committee may take no action unless a quorum is present. A majority vote of the members present in favor of a motion or any proposed action shall be required in order for the motion to pass or the action to be taken.

E. Responsibilities

The Public Defender is responsible for determining the eligibility of attorneys for appointment to cases under these regulations. In discharging this responsibility, the Public Defender shall consult with the Committee and shall afford the Committee the opportunity to:

1. Review requests from attorneys concerning placement on the various appointments lists
2. Make recommendations regarding placement or removal of attorneys from the various appointment lists
3. Make recommendations regarding the number and type of lists and qualifications to be on the lists
4. Make any other recommendations regarding the operation of the local indigent defense program.

In consultation with the Committee, the Public Defender shall establish procedures for the carrying out of the Committee's business, including establishing such subcommittees as may be necessary to assist the Committee. Such subcommittees may consist of people who are not members of the Committee.

F. Administrative Assistance

The Administrator of these regulations designated by the Public Defender shall assist the Committee in performing its duties, including as necessary notifying Committee members of meetings, providing them with materials pertinent to their business, and maintaining records relating to the actions of the Committee.

VIII. Placement of Attorneys on Lists

A. Application

1. Any attorney who wishes to have his or her name added to any list shall file a written request with the Administrator on a form provided by the Administrator. The request shall include information that will facilitate the Public Defender's and Committee's determination whether the attorney meets the standards set forth in Article IX for placement on the list. All materials required by Article IX must be attached to the request.

2. An attorney who wishes to have his or her name removed from a list shall file a written request with the Administrator, and the Administrator shall remove the attorney's name from the list and notify the court and any other interested parties. If an attorney has had his or her name removed from a list, the attorney must reapply to be on that list.

3. An attorney who wishes to transfer from one list to another shall file a written request with the Administrator on a form provided by the Administrator. The Administrator shall grant the request if the attorney wishes to transfer to a list for which the attorney has already met the qualifications by virtue of being on the list from which the attorney is being removed (for example, the attorney wants to transfer from List 3 to List 2 or List 1). All other requests shall include the materials required by Article IX and any other information that will facilitate the Public Defender's and Committee's determination whether the attorney meets the standards set forth in Article IX for placement on the particular list.

B. Addition to List

In consultation with the Committee, the Public Defender shall determine whether the attorney meets all of the applicable standards in Article IX. The Public Defender shall assure that the requesting attorney is given prompt written notice of the action taken with

respect to his or her request and is advised of the basis for denial if the request is not granted.

The Public Defender shall afford to the Committee the opportunity to review each request by an attorney to be added to a list and to recommend to the Public Defender whether the attorney should be added to the list. The Public Defender may request that an attorney applicant submit additional information, including appearing before the Committee to be interviewed. Any member of the Committee may discuss requests with other members of the bar and the bench and may relate information obtained thereby to other members of the Committee. By applying to be included on a list, an attorney applicant consents to the confidentiality of such inquiries. The Committee may hold a request in abeyance for a reasonable period of time while obtaining additional information.

C. Removal from List

In consultation with the Committee, the Public Defender may remove an attorney from a list if at any time an attorney no longer meets the standards set forth in Article IX for the list on which he or she is placed, does not meet the performance standards in Article XI, or otherwise fails to meet the responsibilities of representation including, but not limited to, billing in compliance with the Rules of the Commission on Indigent Defense Services, all local rules, and the Revised Rules of Professional Conduct. However, if the Public Defender finds that one of these conditions exists, but is temporary and remediable, the Public Defender may temporarily suspend the attorney from the list.

With the attorney's consent, the Public Defender may place the attorney's name on a list for which the attorney is qualified by virtue of being on the list from which the attorney is removed.

The Public Defender shall afford the Committee an opportunity to consult with the Public Defender before an attorney is removed from a list; however, the Public Defender may suspend appointments to an attorney before consulting with the Committee if the Public Defender determines that such action is necessary to assure quality representation.

D. Requests for Review

Requests for review of decisions denying placement of an attorney on a particular list or removing an attorney from a list should be made to the Director of the Office of Indigent Defense Services or his or her designee. Requests shall be in writing and shall be postmarked within 15 days of when the attorney receives notice of the decision.

IX. Lists of Attorneys

A. General Requirements

To be eligible to be included on any of the lists provided for herein, an attorney must:

1. Be licensed to practice in North Carolina;
2. Maintain an office in the 16A Judicial District or be otherwise able to meet with clients in Scotland and Hoke Counties and demonstrate this ability to meet with clients in Scotland and Hoke Counties to the Committee;
3. Have a working fax and e-mail; and
4. Submit an application to be placed on the particular list and be approved as provided in Article VIII, above.

Any attorney currently on a list as of the date of the effective date of these regulations shall remain on that list.

B. Provision of Lists

The Public Defender or his or her designee shall provide to the court the current list of attorneys subject to appointment in the 16A Judicial District. The Public Defender or his or her designee shall update the list at least every three months or sooner if there are additions or deletions. Attorneys currently on court appointed lists need only submit requests for appointment to those lists, provided by the Public Defender, to be considered for appointment on those lists.

C. Lists

List 1: Misdemeanor Cases and Misdemeanor Probation Violations

Attorneys on List 1 will represent indigent persons accused of misdemeanors and misdemeanor probation violations in all proceedings before the district court. They will also represent respondents in show cause orders alleging contempt in district court criminal proceedings (but not in child support contempt matters). Attorneys who are appointed misdemeanors in district court shall continue their representation of the defendant on de novo appeal in superior court.

Requirements: To qualify for List 1, a significant portion of the attorney's practice must be or must be expected to be criminal law and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in misdemeanor cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

List 2: Felonies F through I and Felony Probation Violations

An attorney on List 2 will represent indigent persons accused of felonies from classes

F through I and felony probation violations in the District and Superior Courts. An attorney on List 2 will also be appointed to represent existing clients on new or pending misdemeanor charges, including, if necessary, trial de novo if the client exercises his or her right to a jury trial.

Requirements: To qualify for List 2, an applicant attorney must have been licensed to practice law for at least two (2) years and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in felony cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also demonstrate that he or she is competent to try a superior court case before a jury and otherwise has the ability to handle felony cases in superior court. The applicant must have tried at least two (2) jury trials to verdict. As an alternative, if the applicant has tried one jury trial to verdict, this jury trial experience requirement can be fulfilled by showing that the attorney has attended at least six (6) hours of continuing legal education in the area of criminal jury trials; if the applicant has no jury trial experience, the requirement can be fulfilled by showing that the attorney has attended at least twelve (12) hours of continuing legal education in the area of criminal jury trials.

List 3: Felonies A to E

Attorneys on List 3 will represent defendants charged with felonies from class B1 to E and defendants charged with Class A felonies subject to I.B., above. A lawyer on List 3 will also be appointed to represent the client on new misdemeanors or non-capital felony charges of any class or misdemeanors or non-capital felony charges of any class pending at the time of the original appointment on the felony cases. The attorney will also be expected to represent any misdemeanor client who exercises the right to trial de novo in superior court after conviction of a misdemeanor in district court.

Requirements: To qualify for List 3, an applicant attorney must have been licensed to practice law for at least three (3) years and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in serious felony cases in superior court and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must have tried as lead counsel or individually at least two jury trials to verdict.

List 4A: Class 1 to 3 Misdemeanor Juvenile Cases

Attorneys on List 4A will represent juveniles alleged to be delinquent or in Chapter 5A contempt in the juvenile courts, where the petition alleges a class 1 to 3 misdemeanor.

Requirements: To qualify for List 4A, an applicant attorney must meet the requirements set forth in Appendix A to this document, which is incorporated herein by reference.

List 4B: Class A1 Misdemeanor and Felony Class F through I Juvenile Cases

Attorneys on List 4B will represent juveniles alleged to be delinquent in the juvenile courts, where the petition alleges a class A1 misdemeanor or class F through I felony. Any attorneys assigned felony cases in this class must be able to continue representation in the superior court if the case is transferred.

Requirements: To qualify for List 4B, an applicant attorney must meet the requirements set forth in Appendix A to this document, which is incorporated herein by reference.

List 5: Felony Juvenile Cases—A through E

Attorneys on List 5 will represent juveniles alleged to be delinquent where the petition alleges class A through E felonies. Attorneys on this list will also be appointed misdemeanors or felonies of any class in which the respondent juvenile is accused of committing the misdemeanor or felony. Any attorneys assigned felony cases in this class must be able to continue representation in superior court if the case is transferred.

Requirements: To qualify for List 5, an applicant attorney must meet the requirements set forth in Appendix A to this document, which is incorporated herein by reference.

List 6: Special Proceedings Counsel

Attorneys on List 6 will represent the following:

- a. persons alleged to be incompetent under Chapter 35A,
- b. minors requesting a judicial waiver of parental consent to abortion,
- d. disabled adults as defined in Chapter 108A of the North Carolina General Statutes,
- e. respondents in involuntary commitment matters, and
- f. any other appointment of indigent counsel not covered elsewhere in this plan.

Requirements: To qualify for List 6 the applicant attorney must be familiar with the relevant specialized areas of law, including the North Carolina laws governing incompetency proceedings, and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in cases listed in this category and will apply that knowledge and skill with appropriate thoroughness and preparation.

List 7: Child Support Enforcement Actions

Attorneys on this list agree to accept child support enforcement cases representing the child support obligor or the person attempted to be held in contempt for whatever purpose.

Requirements: To qualify for this list, the attorney must be familiar with Chapters 50 and Chapters 110 of the North Carolina General Statutes and other relevant law on child support enforcement, and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in child support enforcement cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

List 8: Parent Representation

Attorneys on this list will represent parents in abuse, neglect, and dependency cases and in proceedings to terminate parental rights. The court shall forward the summons and petition to the appointed attorney by facsimile.

In any case in which a petition for termination of parental rights is filed, unless good cause exists not to do so, the same attorney shall be appointed to represent the parent in the termination proceeding if the parent has been represented by that attorney in the abuse, neglect, and dependency proceeding.

If criminal charges are pending against the parent at the time of commencement of the abuse, neglect, and dependency case or the proceeding to terminate parental rights, the court shall appoint the Public Defender to represent the parent. If a private attorney has been appointed and thereafter learns that criminal charges are pending or have been filed against the parent, the attorney shall notify the Public Defender and, on request of the Public Defender, the attorney shall move to withdraw and the court shall appoint the Public Defender, unless the Public Defender has a conflict of interest or the attorney's withdrawal would otherwise harm the interests of the parent.

Requirements: To qualify for this list attorneys must be familiar with the relevant specialized area of law and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in the cases in this category and will apply that knowledge and skill with appropriate thoroughness and preparation.

X. Performance Standards

Attorneys on the Indigent Appointment Lists are expected to provide quality representation for all clients. Minimum standards of representation include, but are not limited to the following:

1. Must maintain regular contact with clients.
2. Must appear on their clients' court dates, absent justifiable excuse (e.g., illness, jury trial, etc.). If scheduling conflicts arise, an attorney should resolve them in accordance with Rule 3.1 of the General Rules of Practice.
3. Must report a North Carolina State Bar Complaint that has been lodged against them to the Public Defender within ten (10) days of the attorney's receipt of the complaint. Attorneys on the Indigent Appointment List are expected to inform the Public Defender of the results of any North Carolina State Bar disciplinary action.

4. Shall not receive anything of value from anyone in connection with representation under these regulations during the period of representation, except as permitted by IDS Rule 1.9(e).
5. Must visit incarcerated clients within three working days after notification of appointment, absent justifiable excuse. If necessary, counsel may arrange for a designee to conduct the initial interview.
6. Must keep the client fully informed as to the status of his case.
7. Must advise their clients on a timely basis of the right to appeal, either for trial de novo or to the appropriate appellate court and, if the client elects to appeal, the attorney must enter notice of appeal for the client. If notice of appeal is to the superior court, the attorney shall continue his or her representation of the client in superior court. If notice of appeal is to the appellate courts, the attorney shall assist the defendant in applying for assistance of appellate counsel
8. Must provide competent representation of clients.
9. Must adhere to the Rules of Professional Conduct of the North Carolina State Bar.

Failure to provide minimum standards of representation as set forth above may lead to the removal of the attorney from the appointment lists.

XI. Miscellaneous

Nothing in these regulations shall be construed or applied inconsistently with the IDS Rules or with other provisions of law. Nothing in these regulations shall preclude the Office of Indigent Defense Services from adopting and enforcing standards and rules that supplement or supercede these regulations or from implementing programs, plans, or contracts regarding the assignment of counsel to improve quality, efficiency, and economy.

The Public Defender shall provide to the Office of Indigent Defense Services such reports and records as may from time to time be required by the Office.

The Public Defender may modify this plan with the approval of the Office of Indigent Defense Services.

XII. Adoption and Certification

These regulations were originally adopted by former Public Defender Richard W. Jackson, and became effective on January 1, 2002.

Section I.B.1. was amended effective December 8, 2004, and effective October 10, 2005. New Section XII. was added effective December 8, 2004. Sections IV.A., IV.C., V.B., V.E., VI.A., and IX.C. List 8 were amended effective February 18, 2005. Sections I.B.2. and VIII.C. were amended effective October 24, 2006. Section IX.C. Lists 4A, 4B, and 5 were amended effective July 23, 2007. New Appendix A was added effective July

23, 2007. Section VI.A.4. was amended effective July 8, 2008. Section VII.B.1. was amended effective August 25, 2008. Section X.5. was amended effective December 20, 2010. Sections III., IV.C., V.B., V.C.3., V.D., V.F.1., VI.A., VI.B.1., VI.B.3., VI.E.1., VII.B.1., VII.B.3., VII.C., VII.D, VIII.B., VIII.C., VIII.D., IX.A., IX.B., IX.C. Lists 1, 2, 3, 4A, 6, and 8, X., and XI. were amended effective August 23, 2016.

The regulations and amendments have been approved and certified by the Executive Director of the Office of Indigent Defense Services in accordance with IDS Rule 1.5(b).

QUALIFICATION STANDARDS FOR PRACTICE IN JUVENILE DELINQUENCY COURT IN DISTRICT 16A¹

The requirements in Section II of this Appendix apply to attorneys who are in good standing but have not recently practiced in juvenile delinquency court or adult criminal court prior to the adoption of these standards. Exemptions from these requirements are set forth in Section III of this Appendix.

I. Definitions

1. Juvenile delinquency training: Training devoted to juvenile law and procedure, as well as special topics relevant to juvenile court, such as adolescent development, mental health, special education, substance abuse, and cultural issues, provided by an approved training provider.
2. Approved training provider: The Office of the Juvenile Defender, the Office of Indigent Defense Services, the UNC School of Government, the North Carolina Bar Association, the North Carolina Academy of Trial Lawyers, the Center for Children’s Defense, or another entity approved by the Office of the Juvenile Defender or the Office of Indigent Defense Services.
3. Court sessions: One complete day of court in which juvenile delinquency matters are heard, with the length of the day depending on the number of matters docketed.

II. Requirements

List 4A (Class 1-3 Misdemeanors, Motions for Contempt)

Prior to approval:

Experience: The applicant must be a duly licensed attorney and a member in good standing of the North Carolina State Bar.

Observation: In each of the districts in which the applicant intends to practice the applicant must observe court sessions according to the following schedule. If court meets two days a month or less, the applicant must observe one session. If court meets one day a week, the applicant must observe two sessions. If court meets more than one day a week, the applicant must observe three sessions. The applicant must provide to the Public Defender and local Committee on Indigent Appointments (hereinafter “Committee”) a written statement of the location, date, and time of the session.

Court counselor office orientation: The applicant must certify to the Public Defender and Committee that the applicant has spent no less than one hour becoming familiar with the

¹ These standards do not apply to law students participating in a law school clinic program under the Rules governing the Board of Law Examiners and the Training of Law Students, Subchapter C, Chapter 1, Title 27 of the North Carolina Administrative Code.

practices and procedures of the court counselor office in each of the districts in which the applicant intends to practice, preferably by meeting with the Chief Court Counselor or Court Counselor Supervisor in each of those districts.

Continuing Requirements:

Training: The attorney must complete at least six hours of juvenile delinquency training within the first year of practice in delinquency court, at least four hours of which must be specifically devoted to juvenile law and procedure and thereafter complete at least three hours of training every other year.

Detention facility: Within the first year of practice, the applicant must confer with the director of the nearest juvenile detention facility or the director's designee in person or by telephone and become familiar with detention center policies and procedures and certify compliance to the Public Defender and Committee.

List 4B (Class A1 Misdemeanors, Class F-I Felonies, Probation Violations)

Prior to approval:

Previous requirements: The applicant must have successfully completed all of the requirements of List 4A.

Experience: The applicant must have recently practiced in juvenile delinquency or adult criminal court on a consistent basis for at least one full year.

Continuing requirements:

Training: The attorney must complete at least three hours of juvenile delinquency training every other year the attorney represents juveniles.

List 5 (Class A-E Felonies)

Prior to approval:

Previous requirements: The applicant must have successfully completed all of the requirements of List 4B.

Experience: The applicant must have recently practiced in juvenile delinquency or adult criminal superior court on a consistent basis for at least three years.

Special qualifications: The applicant must be willing to continue to represent a juvenile if the juvenile's case is transferred to Superior Court and be qualified by the Public Defender and Committee to represent adults in felony cases in Superior Court.

Continuing requirements:

Training: The attorney must complete at least three hours of juvenile delinquency training every other year the attorney represents juveniles.

III. Exemptions

Exemptions from the above requirements:

1. For attorneys who are in good standing and have practiced in **juvenile delinquency court** prior to the adoption of these standards, the qualification standards are as follows:

An attorney who wishes to be placed on **List 4A** must have recently practiced in juvenile delinquency court on a consistent basis for at least one full year, and have completed at least two contested juvenile delinquency misdemeanor adjudicatory hearings. Within two years of initial approval, the attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee.

An attorney who wishes to be placed on **List 4B** must have recently practiced in juvenile delinquency court on a consistent basis for at least two full years, and have completed at least three contested juvenile delinquency hearings, including at least one misdemeanor adjudicatory hearing and one felony adjudicatory hearing. Within two years of initial approval, the attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee.

An attorney who wishes to be placed on **List 5** must have practiced in juvenile delinquency court for at least three full years, and have completed at least six contested juvenile delinquency hearings, including at least two felony adjudicatory hearings (one of which must be a Class A through E felony) and at least two hearings where the juvenile could potentially have been committed to a youth development center. Within two years of initial approval, the attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee. The attorney also must be willing to continue to represent a juvenile if the juvenile's case is transferred to Superior Court and be qualified by the Public Defender and Committee to represent adults in felony cases in Superior Court.

2. For attorneys who are in good standing and have practiced in **adult criminal court** prior to or after the adoption of these standards, the qualification standards are as follows:

An attorney who wishes to be placed on **List 4A** must have recently practiced in adult criminal (district or superior) court on a consistent basis for at least one full year and have completed the Observation and Court Counselor Office Orientation requirements under List 4A. Within one year of initial approval, the attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee.

An attorney who wishes to be placed on **List 4B** must have recently practiced in adult criminal (district or superior) court on a consistent basis for at least two full years, and have completed the Observation and Court Counselor Office Orientation requirements under List 4A. Within one year of initial approval, the attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee.

An attorney who wishes to be placed on **List 5** must have recently practiced in adult criminal superior court on a consistent basis for at least three full years and have completed the Observation and Court Counselor Officer Orientation requirements under List 4A. Within one year of initial approval, the attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee. The attorney also must be willing to continue to represent a juvenile if the juvenile's case is transferred to Superior Court, and be qualified by the Public Defender and Committee to represent adults in felony cases in Superior Court.

3. Assistant Public Defenders who are assigned to delinquency court may be exempt from the Experience requirements if: (1) all other requirements under the respective lists are satisfied; and (2) an experienced member of the Public Defender staff is available to assist the assistant public defender when requested.