

**REGULATIONS FOR APPOINTMENT OF COUNSEL IN THE  
EIGHTEENTH JUDICIAL DISTRICT  
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 all non-criminal cases in the trial division in the Eighteenth 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 Office of Indigent Defense Services (“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 Eighteenth 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 Eighteenth 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 (including defendants charged with criminal nonsupport but not including defendants charged with criminal contempt for failing to pay child support)
2. Juveniles in cases in which the juvenile is alleged to be delinquent
3. Respondents in involuntary commitment matters

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, in a form provided by the Public Defender, 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 the Public Defender finds that his or her office is unable to handle a case because of a conflict, the Public Defender shall notify the court, and the court shall assign the case to private counsel as provided in Article VI, below. 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.

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 for a reason other than the attorney's unavailability, the Public Defender shall return to that attorney for the next appointment.

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, 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 the most appropriate method under the circumstances 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 prosecutor's office and to the defendant or respondent with 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 Public Defender shall assign the case to an assistant public defender or to a new private attorney. If the public defender has a conflict, the court shall assign new counsel.

#### **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, 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. However, if new charges are brought against a former criminal defendant after disposition of unrelated, previous charges, there shall be no presumption that the attorney

who represented the defendant on the previous charges should be appointed to represent that defendant on the new charges.

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, an attorney shall move to withdraw so that the Public Defender may assign all of the matters to other counsel who is on all of the appropriate lists. In the event the Public Defender has a conflict, the court shall assign all of the matters to new counsel.

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; the Office of Pretrial Services shall assist the court in this determination.
2. Respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes;
3. Defendants charged with contempt in child support enforcement matters;
4. Parents in cases in which a juvenile is alleged to be abused, neglected, or dependent, except if criminal charges are pending against the parent;
5. Minors requesting judicial waiver of parental consent to abortion;
6. Respondents in petitions for termination of parental rights except if criminal charges are pending against the respondent;
7. Persons responding to show cause orders for contempt of court;
8. 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;
9. Persons found to be material witnesses by the court;
10. Respondents in proceedings for the provision of protective services according to Chapter 108A, Article 6, of the General Statutes;
11. Respondents in proceedings for sterilization under Chapter 35, Article 7

- (sterilization of persons mentally ill and mentally retarded);
12. 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;
  13. 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. When an appointment is to be made either by the district or superior court, the clerk of court shall be contacted in order to obtain the name of the next person on the master lists for the case under consideration.

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, 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.

If in a criminal matter, or in a juvenile delinquency matter, a defendant or juvenile has a charge or charges pending, and a new charge is filed, the court shall appoint the attorney appointed on the initial charges as counsel of record for the defendant or juvenile until all of the pending matters are disposed of, subject to the provisions of Section VI, subsection E(2).

If an attorney is representing a parent in an abuse, neglect or dependency matter, and a petition or motion for termination of parental rights is filed against that parent, the court shall appoint the attorney as counsel on the termination of parental rights matter, unless the court determines that the attorney does not have the requisite experience to represent respondents in termination of parental rights hearings. If the court determines that the attorney does not have the requisite experience, the court may appoint another attorney if

the court deems it appropriate.

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. In abuse, neglect, or dependency and termination of parental rights proceedings, the court shall forward the summons and petition to the appointed attorney by facsimile.

#### **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, 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. However, if new charges are brought against a former criminal defendant after disposition of unrelated, previous charges, there shall be no presumption that the attorney who represented the defendant on the previous charges should be appointed to represent that defendant on the new charges.

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 appoint the 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. Three positions designated as Senior Resident Judge positions, to be appointed by the Senior Resident Judge.
- b. Three positions designated as District Court Judge positions, to be appointed by the Chief District Court Judge.
- c. Two positions designated as Eighteenth Judicial District Bar positions, to be appointed by the President of the Eighteenth Judicial District Bar.
- d. One position designated as Eighteenth Judicial District – High Point Bar positions, to be appointed by the President of the Eighteenth Judicial District – High Point Bar.
- e. Three positions designated as Public Defender positions, to be appointed by the Public Defender, one of whom may be an Assistant Public Defender.
- f. One position held by the Public Defender.

2. If that person agrees, the Director of Pretrial Services shall serve as an *ex officio* member of the Committee and shall also serve as the Administrator to the Committee.

3. Members of the Committee shall be appointed for terms of two years. Any member who resigns or becomes ineligible to continue serving as a member should be replaced for his or her term by the appropriate party 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 three (3) years in the Eighteenth Judicial District; and
2. are knowledgeable about practicing attorneys in the Eighteenth Judicial District.

## **D. Meetings**

1. Meetings of the Committee shall be called by the chair or Public Defender on reasonable notice. The Committee shall meet at least once a month until the procedures outlined herein are fully implemented and thereafter as often as necessary to dispatch the Committee's business but not less than quarterly.

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

1. Review requests from attorneys concerning placement on the various appointments lists
2. Determine the placement or removal of attorneys from the various appointment lists
3. Determine the number and type of lists and qualifications to be on the lists
4. Recruit additional qualified attorneys to represent individuals entitled to counsel under these rules.

The Public Defender and the Committee 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**

The Public Defender, in conjunction with the Committee, 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 and the Committee shall review each request by an attorney to be added to a list. The Public Defender and the Committee 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**

The Public Defender, in conjunction with the Committee, 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 was removed.

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.

#### **E. Vacation Policy**

When an attorney who is on any of the indigent lists will be on vacation for longer than four (4) business days, the attorney must notify the Clerk of Superior Court in writing of the vacation. This written notice must set forth the list(s) upon which the attorney's name appears. The attorney will not receive appointments to any new cases during the duration of the vacation.

#### **F. Sabbatical Policy**

An appointed attorney may temporarily remove his or her name from any or all court-appointed list(s) for up to one (1) year. In order to do this, the attorney must give written notice to both the Clerk of Superior Court and the Committee Administrator. The written notice must clearly state that the attorney desires to take a sabbatical from indigent case appointments, but the attorney does not need to give a reason for the sabbatical. When the attorney is ready to begin receiving appointments again, the attorney shall give written notification to the Committee Administrator. This sabbatical can only be taken with regard to prospective clients, and the attorney must continue to represent all current appointed clients unless allowed to withdraw by a court.

### **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 18th Judicial District or otherwise demonstrate to the Committee that he or she will be available to the court and to clients;
3. Have a working fax or e-mail; and

4. Submit an application to be placed on the particular list and be approved as provided in Article VIII, above.

In addition, any new attorney seeking to have his or her name placed on any appointed list shall have a mentor. A new attorney is defined as one who either: 1) passed the bar exam within the past year; or 2) first began representing clients within the past year. The mentor shall be an attorney who has practiced within the past five years in at least one of the areas of law that is the subject of the application. After being placed on the appointed list(s), the new attorney and mentor shall speak at least once per month and more frequently as needed. It shall be the responsibility of the new attorney to make the minimum monthly contact with the mentor. Mentorship is not intended as an onerous requirement; rather, it is intended to provide a new attorney access to needed skills. It is suggested that both the new attorney and the mentor keep some written record of their contact and attempted contact. The mentorship program shall further include:

1. The new attorney may choose his or her mentor. The new attorney should attach to his or her application a letter from the mentor agreeing to the mentorship.
2. If the applicant does not choose a mentor, or the Committee decides an additional mentor would prove helpful, the Committee will assign a mentor.
3. The Committee will develop and maintain a list of mentors.
4. This mentoring requirement will last for one year after the new attorney is added to any appointed list.
5. The mentor will speak regularly with the new attorney and report any serious concerns to the Committee. The new attorney agrees that the mentor can discuss his or her progress with the Committee.
6. While this requirement is primarily intended for new attorneys, the Committee can assign a mentor to any attorney receiving appointed cases if the Committee determines that it is appropriate.
7. The new attorney and the mentor shall not be compensated from state funds for the time associated with the mentorship program.
8. Nothing herein is intended to waive the attorney-client privilege.

## **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 Eighteenth Judicial District. The Public Defender or his or her designee shall update the list at least every 3 months or sooner if the Committee and the Public Defender make additions or deletions.

## **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 1A: Adult Misdemeanor Driving While Impaired (DWI) Cases***

Attorneys on List 1A will represent indigent persons accused of misdemeanor driving while impaired (DWI) in all proceedings before the district court. Attorneys who are appointed misdemeanor DWIs in district court shall continue their representation of the defendant on de novo appeal in superior court.

*Requirements:* To qualify for List 1A, the applicant must demonstrate that he or she has the required legal knowledge, training, experience and skill relating to DWI, traffic, and Department of Motor Vehicle (DMV) laws necessary for the representation in DWI cases and will apply that knowledge, training, experience, 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. In addition to other background and experience, this 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.

***List 3: Felonies A to E, all Drug Trafficking Offenses, and all Indecent Liberties Offenses***

Attorneys on List 3 will represent defendants charged with felonies from class B1 to E, with Class A felonies subject to these Regulations, as described in Article I.B., above,

with all drug trafficking offenses, and with indecent liberties offenses under G.S. 14-202.1, 14-202.2, 14.202.3, and 14.202.4. 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 three jury trials to verdict.

***List 4: Misdemeanor Juvenile Cases, Motions for Contempt***

Attorneys on List 4 will represent juveniles alleged to be delinquent in the juvenile courts, where the petition alleges a misdemeanor offense.

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

***List 5: Class F through I Felony Juvenile Cases, Probation Violations***

Attorneys on List 5 will represent juveniles alleged to be delinquent where the petition alleges class F through I felonies or a probation violation. Attorneys on this list will also be appointed misdemeanor juvenile cases in which the respondent juvenile is accused of committing a misdemeanor. 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 5, an applicant must meet the requirements set forth for List 5 in Appendix A to this document, which is incorporated herein by reference.

***List 6: Class A through E Felony Juvenile Cases***

Attorneys on List 6 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 6, an applicant must meet the requirements set forth for List 6 in Appendix A to this document, which is incorporated herein by reference.

***List 7: Special Proceedings/Civil Contempt Counsel***

Attorneys on List 7 will represent the following:

- a. persons alleged to be incompetent under Chapter 35A;
- b. minors requesting a judicial waiver of parental consent to abortion;
- c. disabled adults as defined in G.S. 108A-105, G.S. 108A-106, and G.S. 1A-1, Rule 17; and
- d. respondents in involuntary commitment matters.

Attorneys in matters for a. through c. will be appointed by the court. Attorneys for matters in d. will be appointed by the Public Defender unless the Public Defender has a conflict, in which case the court shall make the appointment.

*Requirements:* To qualify for List 7 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.

All applicants for List 7a (incompetency) must observe a minimum of three (3) clerk of court incompetency hearing-room sessions; speak with a clerk of court hearing officer regarding procedures and expectations; and review a sample copy of a properly completed, attorney-prepared Guardian ad Litem (GAL) report so that the applicant will better understand what is expected in his/her written reports. Completion of these requirements is a prerequisite for List 7a. The applicant must submit a written letter to the Administrator documenting compliance with these requirements.

***List 8: 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 Chapter 50 and Chapter 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 9: 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, the court shall unless good cause exists not to do so appoint the same attorney to represent the parent in the termination proceeding if the parent has been represented by that attorney in the abuse, neglect, and dependency proceeding.

*Requirements:* To qualify for this list, an applicant must meet the requirements set forth for List 9 in Appendix B to this document, which is incorporated herein by reference. .

## **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 answer to 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 appointed representation.  
Compensation is limited to that provided under the applicable IDS Rule. If an attorney learns that his or her client has other pending charges for which he or she is entitled to appointed counsel, the appropriate action is for the attorney and/or the client to ask the court to appoint the attorney on these additional cases. If the attorney learns that his or her client has other pending charges for which he or she would not qualify for appointed counsel, IDS prefers that the attorney refer the client to another attorney to avoid any potential appearance of impropriety. If an attorney learns that his or her client has sufficient funds to pay for the appointed representation, G.S. 7A-450(d) directs the attorney to inform the court so that the court can reevaluate indigency. Once the appointed representation is concluded, the client may retain the previously appointed attorney on other matters.
5. Must visit incarcerated clients within 3 business days after notification of appointment, absent justifiable excuse (e.g., illness, jury trial, etc.) 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 adopted by Public Defender Wallace C. Harrelson, and became effective on February 1, 2002.

Sections VI.B.3 and IX.C. were amended effective November 3, 2003. 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 I.B.2. and VIII.C. were amended effective October 24, 2006. New Sections VIII.E. and VIII.F. were added effective January 16, 2007. Sections IX.C. List 4, List 5, and List 6 were amended effective January 16, 2007. New Appendix A was added effective January 16, 2007. Sections VI.A.8. and IX.C. List 3 were amended effective May 21, 2008. Sections IX.A. and IX.C. List 7(d) were amended effective October 4, 2010. Section X.4. was amended effective January 11, 2011. Sections III., IV.A., V.C.3., V.D., V.F., VI.A., VI.B.3., VI.D., VI.E., VII.A., VII.B., VII.D., VIII.B., VIII.C., VIII.D., IX.A, IX.C. Lists 1, 2, 3, 4, 7, and 9, X.2., X.5., X.7., and XI., and Appendix A Section 2. List 4, were amended effective June 26, 2013. Section IX.C., Lists 3 and 9, were amended and New Appendix B was added effective August 7, 2014. Sections VII.C. and IX.C., List 7, were amended and Section IX.C, List 1A was added effective December 4, 2017.

The regulations and amendments have been approved and certified by the Executive

Director of the Office of Indigent Defense Services in accordance with Rule 1.5(b) of the Rules of the Commission on Indigent Defense Services.

**APPENDIX A**  
**QUALIFICATION STANDARDS FOR PRACTICE**  
**IN JUVENILE DELINQUENCY COURT IN GUILFORD COUNTY<sup>1</sup>**  
**(Effective June 26, 2013)**

**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 Children's Law Center, the Greensboro and High Point Bar Associations, the local Criminal Defense Lawyers Association or another entity approved by the Office of the Juvenile Defender, the Office of Indigent Defense Services or the local Guilford County Committee on Indigent Appointments.

**II. Requirements**

**List 4 (Misdemeanors)**

Prior to Approval:

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

Observation: The applicant must observe (1) 1 hour of pre-delinquency hearings; (2) 2 hours of a morning session of court; and (3) a trial (typically on Friday). The applicant must further review and become familiar with copies of the forms used in juvenile court, including a Transcript of Admission, Waiver of Probable Cause, and Continuance Form.

Court Counselor Office Orientation: The applicant must spend at least one hour becoming familiar with the practices and procedures of the court counselor preferably by meeting with the Chief Court Counselor or Court Counselor Supervisor.

Written Certification of Compliance: The applicant must certify in writing to the Guilford County Committee on Indigent Appointments that he/she has completed the above requirements before he/she can receive appointed cases. This written certification must be directed to the Administrator of the Guilford County

---

<sup>1</sup> 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.

Committee on Indigent Appointments. A short written statement by the applicant is sufficient.

Continuing Requirements:

Training: All attorneys 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. Thereafter, the attorney must complete at least three hours of juvenile delinquency training every other year.

**List 5 (Class F-I Felonies, Probation Violations)**

The requirements for List 5 are the same as those for persons applying for List 4; there is no further condition or requirement that must be met. However, the Committee on Indigent Appointments will review all applications and decide whether the applicant can receive List 5 appointed cases.

**List 6 (Class A-E Felonies)**

Prior to Approval:

General Requirements: The applicant must have successfully completed all of the above requirements of Lists 4 and 5.

Experience: The applicant must have recently practiced in juvenile delinquency or adult criminal superior court on a consistent basis for at least three (3) years and be in good standing with the Committee on Indigent Appointments. The applicant must further certify that he/she has taken a trial practice CLE within the past three (3) years from an approved training provider.

Written Certification of Compliance: The applicant must certify in writing to the Guilford County Committee on Indigent Appointments that he/she has completed the above requirements before he/she can receive List 6 appointed cases. This written certification must be directed to the Administrator of the Guilford County Committee on Indigent Appointments. A short written statement by the applicant is sufficient.

Continuing requirements:

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

**III. Exemptions**

**Exemptions from the Above Requirements:**

1. Attorneys Presently on Juvenile Court-Appointed Lists: Any attorney already on a juvenile appointed list is exempted from the “prior to approval” requirements of that list. All attorneys must comply with the continuing requirements; as a continuing requirement, all appointed juvenile attorneys must complete at least three hours of juvenile delinquency training every other year.

2. Attorneys Formerly on Juvenile Appointed Lists: Any attorney who was on a particular juvenile appointed list within the past 5 years is exempted from the “prior to approval” requirements of that list. The applicant/attorney must give a written summary of his/her past juvenile experience. All attorneys must comply with the continuing requirements; as a continuing requirement, all appointed juvenile attorneys must complete at least three hours of juvenile delinquency training every other year.
3. Assistant Public Defenders (APD): An APD assigned to delinquency court is exempted from the “prior to approval” requirements if an experienced member of the Public Defender staff is available to assist the APD when requested or as ordered by the court. All attorneys must comply with the continuing requirements; as a continuing requirement, all appointed juvenile attorneys must complete at least three hours of juvenile delinquency training every other year.

#### **IV. Miscellaneous**

1. Review by Committee: The Committee on Indigent Appointments will review all applications and decide whether the applicant can receive appointed cases. If any attorney fails to comply with these qualification standards, he/she may be removed from the appointed juvenile list(s).
2. Responsibility for CLE Training: The attorney is responsible for taking all CLE training mandated by these regulations. The attorney is responsible for maintaining records of this CLE training and the attorney further must provide proof of such CLE training if requested. It is the responsibility of the Office of the Juvenile Defender to monitor compliance with CLE requirements and notify both the attorney and the local Committee on Indigent Appointments of any non-compliance. Any notification of non-compliance will permit the attorney ample time to remedy the situation based upon the availability of future CLE seminars.
3. Transfers to Superior Court in Cases where the Public Defender Office has a Conflict: In cases in which the court appoints private counsel because the public defender office has a conflict of interest, if the case is transferred to superior court, the transferring district court judge shall examine who will represent the juvenile from that point forward. The district court judge should consider whether an attorney on the corresponding regular adult criminal court-appointed list would better represent the juvenile in superior court. *See* Article VI.A.1. above (“Appointment of Private Counsel by Court”).

Duty of Attorney: An attorney in a juvenile delinquency proceeding or in an order to show cause proceeding against an undisciplined juvenile shall be the juvenile’s voice to the court, representing the express interests (not the best interests) of the juvenile at every stage of the proceedings. The duty of the attorney is to zealously represent his or her client and explore all suitable

defenses, trial strategies, and sentencing dispositions. The attorney owes the same duties to the juvenile under the Rules of Professional Conduct, including the duties of loyalty and confidentiality, as an attorney owes to an adult criminal defendant. In addition, the attorney has a responsibility to counsel the juvenile, recommend to the juvenile actions consistent with the juvenile's interest, and advise the juvenile as to potential outcomes of various courses of action.

**APPENDIX B**  
**QUALIFICATION STANDARDS FOR PRACTICE**  
**IN PARENT REPRESENTATION COURT IN GUILFORD COUNTY**  
**(Effective August 7, 2014)**

**I. Definitions**

1. Child Welfare Court: Refers to the juvenile court division involving abuse, neglect, dependency (“A/N/D”) and termination of parental rights (“TPR”) proceedings.
2. A/N/D and TPR Training: Training devoted to juvenile law and procedure as it relates to A/N/D and TPR proceedings, as well as special topics relevant to this juvenile division, such as child development, mental health, substance abuse, domestic violence, poverty and other cultural issues, provided by an approved training provider.
3. Approved Training Provider: The Office of Indigent Defense Services (“IDS”) and the Office of Parent Representation, the UNC School of Government, the North Carolina Bar Association, the North Carolina Advocates for Justice, the Greensboro and High Point Bar Associations, the Children’s Home Society, Family Preservation of the Piedmont, the Juvenile Court Infant Toddler Initiative (“JCITI”), or another entity approved by IDS or Office of Parent Representation, the local Guilford County Committee on Indigent Appointments or Guilford County Juvenile Court Judges.

**II. Requirements**

**List 9: (Parent Representation)**

1. Prior to Approval:

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

Observation: The applicant must observe at least two (2) full morning sessions of A/N/D court and one (1) contested TPR trial.

Prior Knowledge of Law: The applicant must be familiar with the current law pertaining to A/N/D and TPR cases from the Juvenile Code

(N.C.G.S.. Chapter 7B) and resources available through IDS and the Office of Parent Representation.

Written Certification of Compliance: The applicant must certify in writing to the Guilford County Committee on Indigent Appointments that he/she has completed the above requirements before he/she can receive appointed cases. This written certification must be directed to the Administrator of the Guilford County Committee on Indigent Appointments. A short written statement by the applicant is sufficient.

2. Upon Approval:

Mentor: The applicant must have a mentor for at least the first year. It is the applicant's responsibility to locate someone willing to serve as a mentor. The mentor must be someone who has practiced in A/N/D and TPR court for at least one year and will be assigned by the Guilford County Committee on Indigent Appointments. The mentor will be available to the applicant during the applicant's first year of handling these cases and shall not be compensated, pursuant to IDS guidelines.

DSS Orientation: As soon as possible, following being approved for the Parent Representation list, the applicant is expected to contact the Deputy County Attorney representing the Department of Social Services ("DSS") and coordinate a time to be oriented on the DSS process, including how reports are received and investigated as well as meeting requirements as a case progresses through foster care.

Training: Within the first year following appointment, the applicant is expected to participate in the Parent Defender's Conference through IDS and the Office of Parent Representation and more thoroughly study the A/N/D and TPR Manual from the UNC School of Government (available online through IDS and the Office of Parent Representation).

Continuing requirements: The attorney must complete at least three (3) hours of training every other year through an "approved training provider."

### III. **Exemptions**

1. Attorneys Presently on the Parent Representation Appointment List: Any Attorney already on the Parent Representation List is exempted from the "prior to approval," the "mentor" and "DSS orientation" requirements but must complete three (3) hours of training every other year.

2. Attorneys Formerly on the Parent Representation Appointment List: Any attorney who was formerly on the Parent Representation appointment list for more than one year is exempted from the “prior to approval,” the “mentor” and “DSS orientation” requirements but must complete three (3) hours of training every other year.