

**REGULATIONS FOR APPOINTMENT OF COUNSEL IN
NEW HANOVER COUNTY (5TH 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 New Hanover County in the 5th 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. Exclusions

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 New Hanover County 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 5th Judicial District in New Hanover County (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

After determining that a person is entitled to appointed counsel, the court shall appoint the Public Defender in the following matters:

1. All defendants in criminal cases.
2. All juveniles alleged to be delinquent or in contempt of an undisciplined order.
3. Criminal and juvenile defendants in noncapital motions for appropriate relief in which the court has found that sufficient grounds exist so as to entitle the defendant or juvenile to a hearing or to assistance of counsel.
4. Persons found to be material witnesses by the court.
5. Persons responding to show cause orders for contempt of court (except in child support matters, alimony matters, or matters pertaining to the failure of a person

to abide by a family court order, in which case the court may appoint either the Public Defender or an attorney from the appropriate private attorney list).

6. To the extent reasonably appropriate, parents entitled to an attorney in abuse, neglect, dependency matters and termination of parental rights proceedings.
7. Respondents in involuntary commitment matters, except that the court may appoint either the Public Defender or an attorney from the appropriate private attorney list.

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.

In all other matters the court shall appoint counsel from the appropriate list of private counsel as provided in Article VI, below. The lists shall be maintained and provided to the court by the Public Defender. In the event that there is no appropriate attorney on any list to handle a particular matter in which a defendant is entitled to counsel, then the court shall appoint the Public Defender.

B. Notice to Client

In cases assigned to the Public Defender, the court shall provide instructions to the client, on a form provided by the Public Defender, on the manner in which the client should contact the Public Defender.

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, 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, but no later than one business day, 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 but before appearing in the case the Public Defender finds that his or her office is unable to handle a case because of a conflict, the Public Defender shall assign the case to private counsel 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 file a motion to withdraw with the court and the court shall appoint private counsel as provided in Article VI, below.

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. However, the Public Defender may add an attorney to the list for appointment solely for a particular matter, with the consent of the attorney, should an unusual or extraordinary circumstance occur where there is a need to have additional counsel added to the list for purposes of securing appropriate counsel for an indigent person.

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 to the extent administratively feasible.

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

Once the Public Defender assigns an assistant public defender or private counsel 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 delivery of the appointment notice in the attorney's designated courthouse box, or by other appropriate notification means, within one business day of the appointment by the Public Defender. 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 along 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 court shall assign the case to new private counsel as provided in Article VI, below; however, if private counsel has conferred with the Public Defender and advises the court that there is no conflict, the court shall appoint the Public Defender.

F. Multiple Counsel / Multiple Charges

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.

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.

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. With the consent of the Public Defender and the attorney to be appointed, one or more of the attorneys appointed to represent the client may be added to a list, in accordance with Article V.C.2., above, to accommodate appropriate and consolidated representation of the client.

4. If new charges are brought against a former criminal defendant after disposition of unrelated, previous charges, to the extent possible, the Public Defender may re-appoint the same counsel to a particular indigent client when it appears that the prior representation of the client will be beneficial to the current representation of the client as a result of the prior relationship developed between counsel and the client and when the former counsel has gained knowledge that will aid in the effective representation of the client.

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. Respondents in involuntary commitment matters; however, the court may appoint the Public Defender in circumstances where the court finds it would be more appropriate for the Public Defender to represent the respondent.
2. Respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes.
3. Persons charged with contempt in child support enforcement matters, alimony matters, or any other matter pertaining to an alleged violation of a family court order, however, the court may appoint the Public Defender in circumstances where the court finds that it would be more appropriate for the Public Defender to represent a person charged with contempt.
4. In conjunction with appointment to the Public Defender, parents or other persons in cases in which a juvenile is alleged to be abused, neglected, or dependent.
5. In conjunction with appointment to the Public Defender, respondents in petitions for termination of parental rights.
6. 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.
7. Respondents in proceedings for the provision of protective services according to Chapter 108A, Article 6, of the General Statutes.
8. Defendants or respondents in cases specified in Article IV, above, only if the court determines that the Public Defender has a conflict.
9. Any other person who has a right to appointed counsel that is not

otherwise described in this article or in Article IV, above.

B. Order of Appointments

1. The Clerk of Superior Court shall maintain in his or her office master lists of attorneys, duly qualified under Article VIII, to handle cases appointed by the court. The Public Defender shall prepare and provide to the clerk such master lists, which shall be made reasonably available to the public upon request. The master lists of attorneys eligible to handle cases appointed by the court may include one or more assistant public defenders. When an appointment is to be made either by the district or superior court, the clerk of court shall provide the name of the next person on the master list to the court, which shall make the assignment 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 has recently represented the 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 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.

C. 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 also forward the summons and petition to the appointed attorney by the most expeditious means possible.

D. Multiple Counsel / Multiple Charges

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.

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.

4. If new charges are brought against a former criminal defendant after disposition of unrelated, previous charges, to the extent possible, the court may re-appoint the same counsel to a particular indigent client when it appears that the prior representation of the client will be beneficial to the current representation of the client as a result of the prior relationship developed between counsel and the client and when the former counsel has gained knowledge that will aid in the effective representation of the client.

VII. Public Defender Committee on Indigent Appointments

A. Establishment of Committee

1. 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 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.

2. The Public Defender shall be the permanent chair of the Committee.

B. Membership of Committee and Terms

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

a. One position designated as Senior Resident Judge position, to be appointed by the Senior Resident Judge.

b. One position designated as District Court Judge position, to be appointed by the Chief District Court Judge.

- c. One position designated as Clerk of Superior Court position, to be appointed by the Clerk of Superior Court.
- d. Three positions designated as Public Defender positions, to be appointed by the Public Defender.
- e. One position held by the Public Defender.

If any one of the present members declines to serve, the appropriate person (e.g., Judge or Clerk) shall fill the vacancy. After the initial Committee is formed, any vacancy occurring will likewise be filled by appointment by the appropriate person.

2. Members of the Committee shall be appointed for terms of two years except that in order to stagger terms the Judge and Clerk positions shall initially serve three-year terms. 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 three years in the 5th Judicial District; and
- 2. are knowledgeable about practicing attorneys in the 5th Judicial District.

Notwithstanding the above, the Clerk of Superior Court may appoint an assistant clerk to the Committee.

D. Meetings

1. Meetings of the Committee shall be called by the chair on reasonable notice. The Committee shall meet at least once every three months 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 consultation 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 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. Participate in determining the placement or removal of attorneys from the various appointment lists.
3. Participate in determining 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.
5. Make any other recommendations regarding the operation of the local indigent defense program.

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. The Administrator shall serve as the secretary to the Committee.

VIII. Placement of Attorneys on Lists

The lists presently utilized and maintained by the New Hanover County Clerk of Court shall constitute the Public Defender's initial list of private counsel. Each attorney must apply and be approved pursuant to this Article to remain on the list; however, the Public Defender may waive the formal application and requirements upon a determination that the person has the skill and knowledge necessary for the representation required for that list. The lists utilized and

maintained by the New Hanover County Clerk of Court for appointment in cases in which the court is responsible for appointing counsel may include one or more assistant public defenders.

A. Application

1. Any attorney who wishes to have his or her name added to any list shall file a written request with the Public Defender. The request shall include information that will facilitate the Public Defender's determination as to whether the attorney meets the standards set forth in Article IX for placement on the list.

2. An attorney who wishes to have his or her name removed from a list shall file a written request with the Public Defender, and the Public Defender 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 returned to that list.

3. An attorney who wishes to transfer from one list to another shall file a written request with the Public Defender. The Public Defender 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 information that will facilitate the Public Defender'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 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 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 review each request by an attorney to be added to a list. The Public Defender may request that an attorney applicant submit additional information, including appearing before the Public Defender, or his or her designee, to be interviewed. The Public Defender may discuss requests with other members of the bar and the bench. 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 consultation with the Committee, may remove or suspend 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 X, 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 shall 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 a box at the New Hanover County Courthouse where notices to the attorney are placed and retrieve such notices on a daily basis.
3. Maintain an office in New Hanover County or in close proximity to the New Hanover County Courthouse and the New Hanover County Jail, or demonstrate the ability to be otherwise able to meet with clients in New Hanover County.
4. Have a working fax and e-mail account.
5. Submit an application to be placed on the particular list and be approved as set forth herein.
6. Be familiar with and comply with any Performance Guidelines for Indigent Defense Representation that may be adopted by the North Carolina Commission on Indigent Defense Services.

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 New Hanover County. The Public Defender or his or her designee shall update the list at least every three (3) months or sooner if the Public Defender

makes additions or deletions.

C. Lists

List 1: Misdemeanor Cases / Misdemeanor Probation Violation Hearings

Attorneys on List 1 will represent indigent persons accused of misdemeanors in all proceedings before the district court. They will also represent respondents in show cause orders and contempt in district court criminal proceedings (but not in child support contempt matters, alimony contempt, or family court matters). Attorneys who are appointed to 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 H through I

An attorney on List 2 will represent indigent persons accused of felonies from classes H through I in the district and superior courts. An attorney on List 2 will also be appointed to represent existing indigent 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 to represent defendants 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 requirement that an applicant have been licensed for at least two (2) years may be waived upon the participation by the applicant in at least two (2) jury trials, from jury selection through deliberation, as either first or second chair.

List 3: Felonies E through G

Attorneys on List 3 will represent defendants charged with felonies from class E through G in the district and superior courts. An attorney on List 3 will also be appointed to represent existing indigent clients on new or pending misdemeanor charges and new or pending class H or I felonies.

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 to represent defendants 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 requirement that an applicant have been licensed for at least three (3) years may be waived upon the participation by the applicant in at least three (3) jury trials, from jury selection through deliberation, as either first or second chair.

List 4: Felonies A through D

Attorneys on List 4 will represent defendants charged with felonies from class B1 to D and with Class A felonies subject to these Regulations, as described in Article I.B. above. A lawyer on List 4 will also be appointed to represent the indigent client on new or pending misdemeanors or non-capital felony charges of any class.

Requirements: To qualify for List 4, 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 individually or as lead counsel at least three jury trials to verdict. Only attorneys who are on the Capital Roster as either lead or associate counsel, or who have otherwise demonstrated eligibility by meeting the general litigation, jury trial, and capital or murder trial experience requirements for lead counsel listed in the [Application for the Capital Rosters](#), may be assigned to represent defendants charged with first-degree murder.

List 5: Felony Probation Violations

Attorneys on List 5 will represent defendants charged with violating any terms of their felony probation.

Requirements: To qualify for List 5, an applicant attorney must meet the requirements of List 2.

List 6: Juvenile Cases - Misdemeanors

Attorneys on List 6 will represent juveniles alleged to be delinquent in the juvenile courts where the petition alleges a misdemeanor offense. They will also represent juveniles in review hearings and show cause hearings alleging contempt or violation of the terms of any prior order, including Chapter 5A contempt.

Requirements: To qualify for List 6, a significant portion of the attorney's practice must be or must be expected to be juvenile and criminal law and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in misdemeanor juvenile cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must further certify that he or she is familiar with

the Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level (adopted December 14, 2007), the practices and procedures of the juvenile court, the policies and procedures of the court counselor office in New Hanover County, the New Hanover County detention center policies and procedures, the Juvenile Code, and other relevant law.

List 7: Felony Juvenile Cases—E through I

Attorneys on List 7 will represent juveniles alleged to be delinquent where the petition alleges class E through I felonies. Attorneys on this list will also be appointed to any new or pending misdemeanor juvenile cases as defined for List 6.

Requirements: To qualify for List 7, an applicant attorney must meet the requirements for List 2 and List 6.

List 8: Felony Juvenile Cases—A through D

Attorneys on List 8 will represent juveniles alleged to be delinquent where the petition alleges class A through D felonies. Attorneys on this list will also be appointed to represent the juvenile on any new or pending misdemeanors or felonies of any class, and on any new or pending juvenile matter as defined in List 7 and List 6.

Requirements: To qualify for List 8, an applicant attorney must meet the requirements for List 4 and List 7. Only attorneys who are on the Capital Roster as either lead or associate counsel, or who have otherwise demonstrated eligibility by meeting the general litigation, jury trial, and capital or murder trial experience requirements for lead counsel listed in the [Application for the Capital Rosters](#), may be assigned to represent juveniles charged with first-degree murder.

List 9A: Involuntary Commitment Counsel

Attorneys on List 9A will represent respondents in involuntary commitment matters. Attorneys for all List 9A matters shall be appointed by the court or by the Superior Court Clerk in accordance with Articles IV and VI above, and the Public Defender shall not be appointed unless there is a conflict and there is no appropriate attorney on the list to accept the matter, except to the extent that the Public Defender places an attorney from his or her office on the list.

Requirements: To qualify for List 9A, an applicant attorney 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 of clients in involuntary commitment cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

List 9B: Other Special Proceedings Counsel

Attorneys on List 9B will represent the following:

- a. persons alleged to be incompetent under Chapter 35A;
- b. minors requesting a judicial waiver of parental consent to abortion; and
- c. disabled adults as defined in Chapter 108A of the North Carolina General Statutes.

Attorneys for all List 9B matters shall be appointed by the court or by the Superior Court Clerk in accordance with Article VI above, and the Public Defender shall not be appointed unless there is a conflict and there is no appropriate attorney on the list to accept the matter.

Requirements: To qualify for List 9B, an 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 10: Child Support Enforcement Actions (including contempt in alimony proceedings or violation of any family law order)

Attorneys on this list agree to accept child support enforcement cases representing the child support obligor or the person charged with contempt for whatever purpose, and any person alleged to have violated the term of any alimony order or other alleged violation of any family law order.

Attorneys for all List 10 matters shall be appointed by the court or by the Superior Court Clerk in accordance with Articles IV and VI, above, and the Public Defender shall not be appointed unless there is a conflict and there is no appropriate attorney on the list to accept the matter, except to the extent that the Public Defender places an attorney from his or her office on the list.

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

List 11: Parent Representation

Attorneys on this list will represent parents in abuse, neglect, and dependency cases and in proceedings to terminate parental rights. 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 as the attorney appointed to represent the parent in any previously filed abuse, neglect, and dependency proceeding.

Attorneys for all List 11 matters shall be appointed by the court or by the Superior Court Clerk in accordance with Articles IV and VI, above. The Public Defender shall be appointed to the extent reasonably possible and to the extent that the Public Defender places attorneys from his or her office on the list.

Requirements: To qualify for this list, an applicant attorney 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. Effective January 1, 2012, each attorney on this list must complete at least one CLE relating to abuse, neglect, and dependency courts per calendar year, for a minimum of four (4) hours per year. The deadline will be December 31st of every calendar year. The first CLE hours will be due December 31, 2012. Each attorney is responsible for providing to the Public Defender a copy of the CLE registration form. The CLE requirement may be waived for any attorney with at least ten (10) consecutive years of experience in representing parents in New Hanover County in abuse, neglect, and dependency and/or termination of parental rights matters if the period of experience immediately precedes the year for which the waiver is being sought.

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, in writing, within five (5) days of the attorney's answer to the complaint. Attorneys on the Indigent Appointment List shall inform the Public Defender, in writing, 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 (3) calendar days after notification of appointment, absent justifiable excuse (e.g., illness, jury trial, etc.).
6. Must keep the client fully informed as to the status of his or her 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 supersede 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 IDS 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 Jennifer Harjo, and became effective on March 10, 2008.

The regulations 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. Sections VI.B.1., VIII, and IX.A. were amended effective June 30, 2010. Sections VI.A. and IX.C. List 11 were amended effective October 26, 2011. Section V.H. was eliminated, and Sections III, IV.A., V.B., V.C.3., V.D., V.F., VI.A., VI.B.3., VI.C., VI.D., VII.B.2., VII.D., VIII, IX.A., IX.C. Lists 1, 2, 3, 4, 5, 6, 10, and 11, X.2., X.4., and XI were amended effective April 15, 2013. Sections IV.A, IV.A.1., and IX.C. List 9 were amended August 15, 2013. Section IX.C., Lists 4, 6, and 8, were amended April 27, 2017.