

# REGULATIONS FOR APPOINTMENT OF COUNSEL IN JUDICIAL DISTRICTS 30A 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* (hereinafter “IDS Rules”). They apply to all non-capital criminal and all non-criminal cases in the trial division in Judicial District 30A 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 (hereinafter “IDS Office”), which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Capital Cases*. However, the court shall appoint counsel from the appropriate list 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.

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

1. The President of the 30<sup>th</sup> Judicial District Bar shall name an Administrator of these regulations for District 30A, who may be a member of the Committee on Indigent Appointments, a judicial assistant for a Superior Court Judge or an officer of the 30<sup>th</sup> Judicial Bar or each County Bar Association.

2. The Administrator shall file and keep current these regulations for the assignment of counsel with the Clerk of Superior Court in each county.

3. The Clerk of Superior Court in each county within the Judicial District 30A shall keep a record of all counsel eligible for appointment in that county under these regulations, as provided in Article IV below, and a permanent record of all appointments made in the county.

### **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.

### **IV. Appointment of Counsel**

#### **A. Order of Appointments**

1. The Clerk of Superior Court shall maintain in his or her office master lists of attorneys for that county, duly qualified under Articles VII and VIII, to handle cases appointed by the court. The Committee on Indigent Appointments shall prepare such master lists, and the Administrator shall provide them to the clerk. These master lists 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 shall provide the name of the next person on the master list to the court, who 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 should 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; however, in exceptional circumstances, the court may appoint a qualified attorney who is not on the list with that attorney’s consent.

3. The court should 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 the attorney who is next in sequence is unavailable or has a conflict, another attorney is already representing the particular client, or the interests of justice require that a specific attorney be appointed rather than the next available attorney. If the court passes over the name of an attorney for a reason other than the attorney’s unavailability, the court should return to that attorney for the next appointment to the extent administratively feasible.

4. The court shall record the appointments it makes. This record shall be made available to the public upon request to the Administrator.

5. 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 two working days, the Clerk of Superior Court shall make a determination of indigency and shall appoint counsel as provided by G.S. 7A-452(c).

6. An attorney's appointment with respect to a particular charge or proceeding shall continue until final disposition of that charge or proceeding, 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.

## **B. Notice**

Upon assigning a case to private counsel, the clerk shall furnish electronic notice of appointment to the attorney. Further, if the client is in custody, the clerk shall provide additional notice to the attorney indicating the client is in custody. Finally, the clerk shall furnish to the client instructions about contacting his or her attorney. In abuse, neglect, or dependency and termination of parental rights proceedings, the court or clerk shall also forward the summons and petition to the appointed attorney by the most expeditious means possible.

## **C. Multiple Counsel**

1. In assigning cases to private counsel, the court should 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 VII 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 pending 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 pending 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 should consult with each other to assure that the client's interests are protected.

## **V. Committee on Indigent Appointments**

### **A. Establishment of Committee in the Judicial District**

A Committee on Indigent Appointments (hereinafter "Committee") is hereby established in Superior Court Judicial District 30A within the 30th Judicial District to assist in the implementation of these regulations in Cherokee, Clay, Graham, Macon and Swain Counties.

## **B. Membership of Committee and Terms**

1. The Committee should consist of not less than three members of the bar in Superior Court Judicial District 30A, including one judge, who are appointed by the President of the 30th Judicial District Bar.

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

3. The President of the 30th Judicial District Bar shall appoint one of the members of each Committee to serve as Chair. Every January, the President of the 30th Judicial District Bar shall provide the IDS Director with the identities of all Committee members and their contact information.

## **C. Qualifications**

All members of the Committee shall be either a judge or practicing attorney who:

1. Have practiced in one or more of the areas covered by the appointment lists for not less than three years in the respective Superior Court Judicial District; and

2. Are knowledgeable about practicing attorneys in the Judicial District covered by the Committee.

## **D. Meetings**

1. Meetings of the Committee should be called by the Chair on reasonable notice. The Committee shall meet 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.

3. The Committee may invite persons to appear at their meetings or to be interviewed.

## **E. Responsibilities**

The Committee is responsible for determining the eligibility of attorneys for appointment to cases under these regulations. In discharging this responsibility, the Committee shall have complete authority to:

1. Supervise the administration of these regulations;
2. Review requests from attorneys concerning their placement on any list and obtain information pertaining to such placement;
3. Approve or disapprove an attorney's addition to or deletion from any list or the transfer of any attorney from one list to another, provided that an attorney's request to be deleted from a list or transferred to a lower-numbered list shall not require Committee approval;
4. Establish procedures with which to carry out their business; and
5. Interview attorneys seeking placement on any list and persons for or against such placement.

#### **F. Administrative Assistance**

The Administrator of these regulations shall assist the Committee in performing their duties, including as necessary:

1. Notifying Committee members of meetings;
2. Attending meetings of the Committee as appropriate;
3. Serving as the secretary to the Committee;
4. Providing the Committee with materials pertinent to their business;
5. Providing the Committee, prior to the Committee's meeting, with the names of attorneys who are requesting placement on any list pursuant to Article VI and the nature of the request;
6. Assuring that all requests properly filed are brought to the attention of the Committee as soon as practicable and no later than the next scheduled meeting of the Committee, except for good cause shown;
7. Upon request of the Committee, assuring that all District and Superior Court judges for Judicial District 30A, as well as any other court officials at the Committee's discretion, are advised of a request concerning placement on any list and given an opportunity to comment;
8. Maintaining records relating to the actions of the Committee;
9. Keeping current the lists of attorneys;
10. Assisting the courtroom clerks and the Clerk of Superior Court in carrying out these regulations; and
11. Performing other administrative tasks necessary to the implementation of these regulations.

## **VI. Placement of Attorneys on Lists in Each County within the 30th Judicial District**

### **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. The request should include information that will facilitate the Committee's determination whether the attorney meets the standards set forth in Article VII for placement on the list. All materials required by Article VII must be attached to the request.

2. By submitting a request for placement on any list, an attorney consents to a confidential inquiry by the Committee of any references listed in the request and others familiar with the attorney's competence, for the purpose of determining whether the attorney fulfills the requirements of Article VII for placement on the list, and the attorney agrees that all information received by the Committee in conjunction with the application, including reference information, shall be confidential and shall not be disclosed except as required by law.

3. 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.

4. An attorney who wishes to transfer from one list to another shall file a written request with the Administrator. The Administrator should 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 should include the materials required by Article VII and any other information that will facilitate the Committee's determination of whether the attorney meets the standards set forth in Article VII for placement on the particular list.

## **B. Addition to List**

1. The Committee shall determine whether the attorney meets all of the applicable standards in Article VII. The Committee 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.

2. The Committee shall review each request by an attorney to be added to a list. 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. The Rules of Evidence do not apply to the review of requests. The Committee may hold a request in abeyance for a reasonable period of time while obtaining additional information.

## **C. Removal from List**

The Committee shall remove an attorney from a list if at any time the attorney no longer meets the standards set forth in Article VII for the list on which he or she is placed, does not meet the performance standards in Article VIII, 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 Committee finds that one of these conditions exists, but is temporary and remediable, the Committee may temporarily suspend the attorney from the list. With the attorney's consent, the Committee may also place the attorney's name on another list for which the attorney is qualified by virtue of having been on the list from which the attorney was removed.

#### **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. Mentorship**

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.

## **VII. Lists of Attorneys in Cherokee, Clay, Graham, Macon and Swain Counties within Judicial District 30A**

### **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 law in North Carolina and be in good standing with the North Carolina State Bar;
2. Maintain an office within Judicial District 30A or in a county adjacent to Judicial District 30A. If the attorney's office is in a county adjacent to Judicial District 30A, the attorney must provide a specific plan detailing the ability to meet with appointed clients within the county or counties for which the attorney is applying, to provide for the required contact with jailed clients, to maintain a professional presence in the appropriate county or counties, and to meet court attendance requirements.
3. Submit an application to be placed on the particular list and be approved as provided in Article VI, above.
4. Once an attorney is approved for Judicial District 30A, it is the Administrator's responsibility to inform the clerk of the attorney's inclusion on the appointment lists in Cherokee, Clay, Graham, Macon and/or Swain Counties in Judicial District 30A

### **B. Provision of Lists**

The clerks in each county of Judicial District 30A shall provide to the Administrator and the court the current lists of attorneys subject to appointment in Judicial District 30A and should update the list at least every three (3) months or sooner if the Committee and the Administrator make additions or deletions. The current list, showing recent appointments, shall be provided to the presiding judge at the beginning of each session of court.

### **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 to



misdemeanors in District Court should continue their representation of the defendants on de novo appeals in Superior Court, so long as no felonies are charged in connection with the misdemeanors.

*Requirements:* To qualify for List 1, a significant portion of the applicant's practice must be, or intended to be, criminal law. The applicant must observe at least one district court session and one district court bench trial in the Judicial District, as well as demonstrate that he or she has the required legal knowledge and skill necessary for representation in misdemeanor cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must attend at least three (3) hours of continuing legal education in the area of criminal law within the first year. To remain on the list each attorney must provide proof of at least three (3) hours of continuing legal education in the area of criminal law each year.

***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 District and Superior Court. 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, the applicant must have been licensed to practice law for at least one (1) year, and must demonstrate that he or she has the required legal knowledge and skill necessary for representation in felony cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also demonstrate that he or she is competent to try a Superior Court case before a jury and otherwise has the ability to handle felony cases in Superior Court. The applicant must have tried at least two (2) jury trials to verdict. As an alternative to jury trial experience, the applicant may show completion of at least twelve (12) hours of continuing legal education in the area of criminal law.

***List 3: Felonies A to E***

Attorneys on List 3 will represent defendants charged with felonies from class B1 to E and with class A felonies subject to these regulations, as described in Article I.B., above. A lawyer on List 3 will also be appointed to represent the client on misdemeanor or non-capital felony charges of any class that are pending at the time of the original appointment on the felony case. 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, the applicant 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 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 at least three (3) jury trials to verdict.

***List 4: Juvenile Cases***

Attorneys on List 4 will represent juveniles alleged to be delinquent or in contempt of an undisciplined order in the juvenile courts.

*Requirements:* To qualify for List 4, the applicant must be familiar with the Juvenile Code and other relevant law governing delinquency proceedings, the applicant must observe at least one juvenile delinquency court session and one juvenile delinquency hearing in the Judicial District, and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in delinquency cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must show that he or she has attended at least three (3) hours of continuing legal education in the area of juvenile delinquency law within the prior year or, if a new attorney, must promise to complete three (3) hours of continuing legal education in the area of juvenile delinquency law within the first year on the list, if such training is reasonably available.

#### ***List 5: Special Proceedings Counsel***

Attorneys on List 5 will represent the following:

1. Persons alleged to be incompetent under Chapter 35A;
2. Minors requesting a judicial waiver of parental consent to abortion;
3. Disabled adults as defined in Chapter 108A of the North Carolina General Statutes; and
4. Respondents in involuntary commitment matters.

*Requirements:* To qualify for List 5, the applicant must be familiar with the relevant specialized areas of law, including the North Carolina laws governing incompetency proceedings, the applicant must observe at least one special proceedings court session and, if possible, one contested special proceeding hearing in the Judicial District, and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in cases listed in this category and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in the area of special proceedings law within the past two (2) years, or promise to attend at least three (3) hours of continuing legal education in the area of special proceedings during his or her first year on the list, if such training is reasonably available.

#### ***List 6: Child Support Enforcement Actions***

Attorneys on List 6 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 List 6, the applicant must be familiar with Chapter 50 and Chapter 110 of the North Carolina General Statutes and other relevant law on child support enforcement, the applicant must observe at least one child support enforcement court session and one child support contempt hearing in the Judicial District, and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in child support enforcement cases and will apply that knowledge and skill with appropriate

thoroughness and preparation. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in the area of child support enforcement law within the past two (2) years, or will promise to attend three (3) hours of continuing legal education in the area of child support enforcement law within his or her first year on the list, if such training is reasonably available.

***List 7: DSS Court Parent Representation***

Attorneys on List 7 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 should, unless good cause exists not to do so, appoint the same attorney to represent the parent in the termination proceeding who represented the parent in the abuse, neglect, and dependency proceeding.

*Requirements:* To qualify for List 7, the applicant must be familiar with the relevant specialized area of law, the applicant must observe at least one court session in which abuse, neglect, dependency or termination of parental rights cases are heard and one contested adjudicatory or termination hearing in the Judicial District, and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in the cases in this category and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in the area of parental rights law within the past year, or will promise to attend three (3) hours of continuing legal education in the area of parental rights law within his or her first year on the list, if such training is reasonably available.

## **VIII. 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 and keep them fully informed as to the status of their cases.
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 Administrator, in writing, within five (5) days of the attorney's answer to the complaint and inform the Administrator, 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 two working days after notification of appointment, absent justifiable excuse. If necessary, counsel may arrange for a designee to conduct the initial interview.
6. Must advise their clients on a timely basis of the right to file a motion for appropriate relief or other post-trial motions, or to file an appeal, either for trial de novo or to the appropriate appellate court and, if the client elects to appeal, 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.
7. Must provide competent representation of clients.
8. Must adhere to the Rules of Professional Conduct of the North Carolina State Bar.
9. Must provide a detailed time sheet, for all hours submitted for payment in a case, upon request of the presiding judge.

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

## **IX. Miscellaneous**


1. Nothing contained in these regulations shall be construed or applied inconsistently with the IDS Rules or with other provisions of law.
2. Nothing in these regulations shall preclude the IDS Office 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.
3. These regulations may be amended by a majority vote of the 30th Judicial District Bar at any regular meeting, subject to approval by the IDS Commission and certification by the IDS Director.
4. These regulations shall become effective on the date they are approved and certified by the IDS Director and shall supersede any existing regulation or plan concerning the appointment of counsel for indigent cases in the 30th Judicial District.

## X. Adoption and Certification

These regulations are approved by the 30th Judicial District Bar as a plan for the appointment of counsel in indigent cases in the 30th Judicial District, North Carolina.

This, the 29<sup>th</sup> day of June, 2018.

BY:

  
ZEBULON L. SMATHERS, ESQ.  
PRESIDENT OF THE 30<sup>th</sup> JUDICIAL DISTRICT BAR

Approved and certified, this the 17 day of July, 2018.

BY:

  
EXECUTIVE DIRECTOR  
OFFICE OF INDIGENT DEFENSE SERVICES