

ONslow COUNTY REGULATIONS FOR APPOINTMENT OF COUNSEL 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 Onslow County 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 Onslow County Bar shall name an Administrator of these regulations, who may be a member of the Committee on Indigent Appointments or an officer of Onslow County Bar.

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

3. The Trial Court Administrator or his designee shall keep a record of all counsel in Onslow County eligible for appointment under these regulations, as provided in Article IV

below, and distribute this list the Clerk of Superior Court as well as all appropriate court personnel. The Clerk of Superior Court shall maintain 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 Trial Court Administrator or his designee shall maintain in his or her office the master lists of attorneys duly qualified under Articles VII and VIII, to handle cases appointed by the court. The Committee on Indigent Appointments shall identify counsel who will be placed or removed on master lists, and the Trial Court Administrator or his designee shall prepare the list and 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 Trial Court Administrator; 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 Clerk of Court.

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 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).

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 court or clerk shall furnish the notice of appointment to the attorney and 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. Committees on Indigent Appointments

A. Establishment of Committee in Onslow County

A Committee on Indigent Appointments (hereinafter “Committee”) is hereby established in Onslow County to assist in the implementation of these regulations.

B. Membership of Committees and Terms

1. The Committee should consist of not less than five members, three of whom are members of the bar appointed by the President of the Onslow County Bar, one of whom is the Chief District Court Judge or his designee, and one of whom is the Senior Resident Superior Court Judge or his designee.

2. Members of the Committee shall be appointed for terms of three 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 Onslow County Bar shall appoint one of the members of the Committee to serve as Chair. Every January, the President of the Onslow County Bar shall provide the IDS Director with the identities of the Committee members and their contact information.

4. The Committee members appointed by the President of Onslow County Bar shall only serve two consecutive terms. A person who has filled an unexpired term may be appointed to two full terms following the completion of the partial term.

C. Qualifications of Attorney Committees

All of the members of the Committee who are appointed by the President of the Onslow County Bar 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 Onslow County; and
2. Are knowledgeable about practicing attorneys in the county 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 twice annually.

2. A majority of the Committee must be present at any meeting in order to constitute a quorum. The Committee may take no action unless a quorum is present. A majority vote of the members present in favor of a motion or any proposed action shall be required in order for the motion to pass or the action to be taken.

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 if desired.

F. Administrative Assistance

The Chair of the Committee or the Administrator of the Committee shall assist the Committee in performing their duties, including the following:

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 received by the Trial Court Administrator or his designee;
6. Assuring that all requests properly filed are brought to the attention of the Committee as soon as practicable and no later than one month upon request, except for good cause shown;
7. On request of the Committee, assuring that all District and Superior Court judges for the 4th Judicial District, 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 to be distributed as appropriate;
9. Keeping current the lists of attorneys to be distributed as appropriate;
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 Onslow County

A. Application

1. Any attorney who wishes to have his or her name added to any list shall file a written request with the Trial Court Administrator or his designee, who will forward the request to the Committee. 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 Trial Court Administrator or his designee, and, in consultation with the Committee, the Trial Court Administrator or his designee 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 Trial Court Administrator or his designee. The Trial Court Administrator or his designee, in consultation with the Committee, 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.

VII. Lists of Attorneys in Onslow County

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;
2. Maintain an office in the county or in an adjacent county (within or outside of the Judicial District), or otherwise demonstrate to the Committee that he or she will be available to the court and to clients; and
3. Submit an application to be placed on the particular list and be approved as provided in Article VI, above.

B. Provision of Lists

The Trial Court Administrator or his designee shall provide to the court the current lists of attorneys subject to appointment in the county and should update the list at least every three (3) months or sooner if the Committee makes 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 to misdemeanors in District Court should continue their representation of the defendants on de novo appeals in Superior Court.

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 county, and the applicant must 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 also show that he or she has attended at least three (3) hours of continuing legal education in the area of criminal law within the past year, if such training is reasonably available.

The applicant must also have two attorneys who have engaged in the practice of law in Onslow County for not less than three years, at least one of whom is included on a criminal list or has experience in criminal law, state in writing that they believe the applicant is competent to represent criminal defendants charged with misdemeanors and that they recommend that the applicant be included on the list, provided that the recommending attorneys may not be members of the applicant's law firm at the time of recommendation.

List 2: Felonies F through I and Felony Probation Violations

An attorney on List 2 will represent indigent persons accused of felonies from classes G through C 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 two (2) years, 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 one (1) jury trial 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 jury trials.

The applicant must also have two attorneys who have engaged in the practice of law in Onslow County for not less than four years, at least one of whom is included on a criminal list or has experience in criminal law, state in writing that they believe the applicant is competent to represent criminal defendants charged with felonies and that they recommend that the applicant be included on the list, provided that the recommending attorneys may not be members of the applicant's law firm at the time of recommendation.

List 3: Felonies A to E

Attorneys on List 3 will represent defendants charged with felonies from cCass 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 five (5) 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 two (2) jury trials to verdict.

The applicant must also have two attorneys who have engaged in the practice of law in Onslow County for not less than five years, at least one of whom is included on a criminal list or has experience in criminal law, state in writing that they believe the applicant is competent to represent criminal defendants charged with serious felonies, and that they recommend that the applicant be included on the list, provided that the recommending attorneys may not be members of the applicant's law firm at the time of recommendation.

List 4: Juvenile Cases

Attorneys on List 4 will represent juveniles alleged to be delinquent in Chapter 5A contempt in the juvenile courts. This list shall be kept by the juvenile clerk and he or she shall provide a copy of the list to the Trial Court Administrator or his or her designee.

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 county, 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 also 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 past year, if such training is reasonably available.

The applicant must also have two attorneys who have engaged in the practice of law in Onslow County for not less than three years, at least one of whom is included on a criminal list or the juvenile delinquency list or has experience in criminal or juvenile delinquency law, state in writing that they believe the applicant is competent to represent juveniles charged with delinquency and that they recommend that the applicant be included on the list, provided that the recommending attorneys may not be members of the applicant's law firm at the time of recommendation.

List 5: Special Proceedings Counsel

Attorneys on List 5 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 Chapter 108A of the North Carolina General Statutes; and
- d. 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 if possible, 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, if such training is reasonably available.

Applicants may designate which of the four sublists included in List 5 on which they wish to be included, but if they do not so designate, it will be assumed that they are applying for and are willing to be included on all four of the sublists.

The applicant must also have two attorneys who have engaged in the practice of law in Onslow County for not less than three years, at least one of whom is included on the special proceedings list or has experience in special proceedings law, state in writing that they believe the applicant is competent to represent respondents in special proceedings and that they recommend that the applicant be included on the list, provided that the recommending attorneys may not be members of the applicant's law firm at the time of recommendation.

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 county, 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, if such training is reasonably available.

The applicant must also have two attorneys who have engaged in the practice of law in Onslow County for not less than three years, at least one of whom is included on the child support list or has experience in child support enforcement law, state in writing that they believe

the applicant is competent to represent clients for child support actions and that they recommend that the applicant be included on the list, provided that the recommending attorneys may not be members of the applicant's law firm at the time of recommendation.

List 7: 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 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. Specifically, the applicant must have read the Commission on Indigent Defense Services' "Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency or Termination Proceedings at the Trial Level". 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, if such training is reasonably available. Further, the applicant must have a valid email address to receive court reports and other documents from DSS and the guardian ad litem.

The applicant must also have two attorneys who have engaged in the practice of law in Onslow County for not less than three years, at least one of whom is included on the parent representation list or has experience in parental rights law, state in writing that they believe the applicant is competent to represent parents in these juvenile actions and that they recommend that the applicant be included on the list, provided that the recommending attorneys may not be members of the applicant's law firm at the time of recommendation.

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 known pending or public North Carolina State Bar complaint that has been lodged against them to the Chair or to the Administrator, in writing, within five (5) days of the attorney's answer to the complaint and inform the Chair or 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 three business 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 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.

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 supercede 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 Onslow County 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 Onslow County.

X. Adoption and Certification

These regulations are approved by the Onslow County Bar as a plan for the appointment of counsel in indigent cases in Onslow County, North Carolina.

This, the 7 day of October, 2015.

BY: 
PRESIDENT OF ONSLOW COUNTY BAR

Approved and certified, this the 19 day of Oct, 2015.

BY: 
EXECUTIVE DIRECTOR
OFFICE OF INDIGENT DEFENSE SERVICES