

**REGULATIONS FOR APPOINTMENT OF COUNSEL IN THE
TWENTY-SIXTH 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* (hereinafter “IDS Rules”). They apply to all cases in the 26th Judicial District in which the provision of counsel is subject to the Indigent Defense Services Act of 2000 (G.S. 7A-498 through 7A-498.8) (hereinafter “IDS Act”).

B. Exceptions

1. In cases in which the defendant is charged with first-degree murder, an undesignated degree of murder, or an offense filed contemporaneously with or subsequently joined with such murder charges, the court shall appoint the IDS Office, which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Capital Cases*. However, the court shall appoint the Public Defender in the 26th Judicial District (hereinafter “Public Defender”) 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 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.

IV. Creation of the Committee on Indigent Appointments

A. Establishment of the Committee

The Committee on Indigent Appointments (hereinafter “Committee”) is established to assist the Public Defender with the implementation of the appointment regulations. The current Committee on Indigent Appointments is a standing committee of the Mecklenburg County Bar and it is the intent of these regulations that the new Committee remain as such. The members of the current committee shall comprise the initial membership of the new Committee. The failure of any of the appointing authorities to make the appointments described below, or the failure of the Committee to meet or do any of the things authorized by these regulations, shall not preclude the Public Defender from performing any of the duties or taking any of the actions authorized by these regulations.

B. Membership of Committee and Terms

The following shall constitute the membership of the Committee:

- a. One Superior Court Judge position, to be appointed by the Senior Resident Superior Court Judge.
- b. One District Court Judge position, to be appointed by the Chief District Court Judge.
- c. Four private attorney positions, to be appointed by the President of the Twenty-Sixth Judicial District Bar in consultation with the Committee Chair.
- d. One position held by the Public Defender.
- e. Two Assistant Public Defender positions, to be appointed by the Public Defender.
- f. One Assistant District Attorney position, to be appointed by the District Attorney.
- g. One attorney from the Council For Children’s Rights, to be appointed by the Director of the Council For Children’s Rights.
- h. One representative from the Family Court Administrator’s Office, to be appointed by the Family Court Administrator.

After the initial Committee is formed, any vacancy occurring will be filled by appointment by the appropriate person as soon as possible for the remainder of the term. Members of the Committee shall be appointed for terms of two years, except for the Public Defender position, which shall be a permanent position for the Public Defender. The Chair of the Committee will be chosen by the President of the Mecklenburg County Bar in consultation with the outgoing chair of the Committee and the Public Defender.

C. Qualifications

Private attorney members of the Committee shall be attorneys who:

1. are included as active or inactive members on one of the appointment lists, as defined in Section VIII.A.2.;
2. have practiced law for not less than 5 years in the 26th Judicial District; and
3. are knowledgeable about practicing attorneys in the 26th Judicial District.

D. Meetings

1. Meetings of the Committee shall be monthly but no less than quarterly. Discussions of the Committee, its records, and its actions shall be treated as confidentially as possible.
2. A majority of the Committee must be present at any meeting in order to constitute a quorum. The Committee may take no action unless a quorum is present. A majority vote of the members present in favor of a motion or any proposed action shall be required in order for the motion to pass or the action to be taken.

E. Responsibilities

The Public Defender, in conjunction with the Committee, is responsible for determining the eligibility of attorneys for appointment to cases under these regulations. The Committee shall identify, and enforce adherence to, minimum expectations for the performance of assigned counsel and shall assist counsel in meeting, and striving to exceed, those expectations. Assigned counsel shall meet, and strive to exceed, minimum expectations for the performance of counsel.

In discharging this responsibility, the Committee shall:

1. Categorize by levels of seriousness and difficulty the types of cases in the jurisdiction;
2. Establish standards detailing the qualifications attorneys must have before being assigned cases at each level;
3. Establish rosters of attorneys who have applied to receive assignments and who have been found qualified to handle a given level of cases;
4. Review and categorize all incoming cases, and assign them to available, qualified attorneys on the appropriate roster;
5. Ensure that lawyers new to the rosters receive a mandatory orientation on indigent defense policies, procedures and on local criminal practice before they are assigned cases;
6. Establish any training requirements and make such available to the applicable attorneys;
7. Establish policies regarding complaints from clients and others;
8. Make any other recommendations regarding the operation of the local indigent defense program.

The Public Defender and the Committee shall establish procedures for carrying out 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 providing the Committee members with materials pertinent to their business, and maintaining records relating to the actions of the Committee.

V. Appointment of Public Defender's Office

A. Cases Covered

Upon determining that a person is entitled to counsel in the matters listed below, the court shall appoint the Public Defender to represent the person:

1. Defendants in criminal cases (including defendants charged with criminal nonsupport but not including defendants charged with criminal contempt for failing to pay child support);
2. Adult respondents in involuntary commitment matters;
3. Persons responding to show cause orders for contempt of court;
4. Defendants in non-capital motions for appropriate relief in which the court has found that sufficient grounds exist so as to entitle the defendant to a hearing;
5. Persons found to be material witnesses by the court;
6. Defendants charged with contempt in child support enforcement matters, where the Public Defender does not assign counsel pursuant to VI of these regulations.
7. Any other person who has a right to appointed counsel that is not otherwise described in these regulations.

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

B. Notice to Client

In cases assigned to the Public Defender, the court shall provide, on a form provided by the Public Defender, notice of the appointment of counsel and instructions to the client for contacting the Public Defender. When the court appoints the Public Defender for an incarcerated person via audio-video transmission, the court shall provide such notice to the person through the Sheriff's Department.

C. Preliminary Determination

Prior to the court's determination of entitlement to counsel, 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.

VI. Assignments by Public Defender

A. Determination

As soon as practicable after learning of an appointment, the Public Defender shall determine whether to assign the case to an assistant public defender or to private counsel. 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 and subject to standards approved by the Office of Indigent Defense. If the Public Defender assigns a case to private counsel, he or she shall record the reasons for doing so. If the Public Defender has appeared in court in the case before determining to assign the case to private counsel, the Public Defender shall move to withdraw before assigning the case to new counsel.

B. Conflicts

If, after being appointed by the court, the Public Defender finds that his or her office is unable to handle a case because of a conflict, the Public Defender shall assign the case to private counsel in accordance with the regular rotation schedule approved in these regulations and any criteria adopted by the Office of Indigent Defense Services.

C. Order of Appointments

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

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

3. The Public Defender shall assign attorneys in regular rotation as provided by these regulations. The Public Defender may appoint an attorney who is not next in sequence if an attorney is unavailable, an attorney has a conflict, another attorney is representing the particular client, or the interests of justice require the appointment of a specific attorney instead of the next available attorney. If the Public Defender passes over the name of an attorney, the Public Defender should return to that attorney for the next appointment unless the attorney indicated that he or she was unavailable in which case the attorney should be appointed in the normal sequence of appointments.

4. The Public Defender shall keep 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

When the Public Defender assigns an assistant public defender to a case, the Public Defender shall enter that information in the Criminal Information System. When the Public Defender assigns a case to private counsel, the Public Defender shall furnish a notice of appointment to the attorney by

the most appropriate method under the circumstances and shall enter the appointment information in the Criminal Information System. The Public Defender shall also file the notice of appointment of private counsel with the Clerk of Superior Court in all cases and with the District Attorney in felony cases. Upon assigning a case to private counsel, the Public Defender shall furnish to the client instructions about contacting his or her attorney. The appointed attorney shall notify the client of his or her appointment to the case.

E. Withdrawal

Once the Public Defender has issued a notice of assignment of private counsel and that counsel has appeared in court, only the court may permit the attorney to withdraw. If the court permits the attorney to withdraw, the Public Defender shall assign the case to an assistant public defender or to a new private attorney. An attorney who has been assigned to a case by the Public Defender may refuse that case for good cause and return the paperwork to the Public Defender's Office for reassignment.

F. Multiple Counsel

1. In assigning cases to private counsel, the Public Defender shall appoint the same attorney on all pending matters concerning the defendant or respondent if the attorney is on the appropriate list. Where a criminal defendant is discharged after a finding of no probable cause in District Court but is later indicted in Superior Court or a case is dismissed in District Court to indict in Superior Court, to the extent possible, the attorney appointed in District Court should be appointed to represent that defendant on the charge in Superior Court if he or she is qualified to do so under Section IX of these regulations. However, if new charges are brought against a former criminal defendant after disposition of unrelated, previous charges, there shall be no presumption that the attorney who represented the defendant on the previous charges should be appointed to represent that defendant on the new charges.

2. If a private attorney is assigned to represent a client on one matter, and the Public Defender receives an appointment in another matter for which the initial attorney is not on the appropriate list, the initial attorney shall if requested by the Public Defender withdraw from the first case so that the Public Defender may then assign all of the matters to a new counsel who is on all of the appropriate lists.

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

G. Requests for Substitution of Counsel

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

VII. Assignments Not Covered by VI

For persons entitled to counsel in the matters listed below, the Public Defender shall assign counsel in accordance with the procedures as described:

1. Respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes—these are assigned under a general rotation procedure administered by the Clerk of Superior Court similar to Section VI;
2. Defendants charged with contempt in child support enforcement matters—unless assigned to the Public Defender pursuant to V.A. of these regulations, these will be grouped by court session and sent to the attorney or attorneys who have signed up to handle cases for a particular court session;
3. Parents in abuse, neglect, and dependency cases and in termination of parental rights cases—these will be contracted out to one or more private attorneys and as necessary under a general rotation procedure;
4. Juveniles in cases in which the juvenile is alleged to be delinquent—unless assigned to the Public Defender pursuant to V.A. of these regulations, these will be assigned in part under a contract with the Children’s Law Center and in part under a general rotation procedure administered by the juvenile court clerk similar to Section VI;
5. Minors requesting judicial waiver of parental consent to abortion—these will be assigned under a general rotation procedure as in 3 above;
6. Respondents in proceedings for sterilization under Chapter 35, Article 7 (sterilization of persons mentally ill and mentally retarded)—these will be assigned under a general rotation procedure;
7. 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—these will be assigned under a general rotation procedure;
8. Respondents in proceedings pursuant to Chapter 108A, Article 6—these will be assigned under a general rotation procedure.

VIII. Placement of Attorneys on Lists

A. Application

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

2. An attorney who wishes to have his or her name removed from a list shall file a written request with the Chair or the Public Defender, and the Public Defender shall remove the attorney’s name from the list and notify the appropriate parties. If an attorney has had his or her name removed from a list, the attorney must reapply to be on that list. Attorneys may at their request be transferred to inactive status on any of the lists and may be reactivated upon their request at the Committee’s discretion.

3. Attorneys who are already qualified and currently on a particular list are to be placed on that same list upon approval by the Committee without formal application.

B. Addition to Lists

The Public Defender in conjunction with the Committee shall determine whether the attorney meets all of the applicable standards in Section IX. The Public Defender shall assure that the requesting attorney is given prompt written notice of the action taken with respect to his or her request and is advised of the basis for denial if the request is not granted.

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

C. Removal from Lists

The Public Defender in conjunction with the Committee may remove an attorney from a list if at any time an attorney no longer meets the standards set forth in Section IX for the list on which he or she is placed, does not meet the performance standards in Section 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 the 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 and the Committee may place the attorney's name on a list for which the attorney is qualified by virtue of being on the list from which the attorney is removed.

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

D. Requests for Review

Requests for review of decisions denying placement of an attorney on a particular list or removing an attorney from a list may be made to the Director of the Office of Indigent Defense Services or his or her designee 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. Maintain a location to meet with clients in the 26th Judicial District, approved by the Indigent Representation Committee; and
2. Be licensed to practice law in North Carolina; and
3. Submit an application to be placed on the particular list and be approved as provided in Article VIII, above; and
4. Maintain a non-long-distance phone line separate from home line; and
5. Be competent to represent clients according to the NC Rules of Professional Conduct.

B. Provision of Lists

The Public Defender or his or her designee shall provide, as appropriate, to the court the current list of attorneys subject to appointment in the Twenty-Sixth Judicial District. The Public Defender or his or her designee shall update the list as soon as possible, but no less than every three months, if there are additions or deletions.

C. Lists

List 1. Misdemeanor List: Includes Misdemeanor cases and Misdemeanor Probation Violations. In addition to General Requirements, an attorney requesting placement on the Misdemeanor List must certify:

He or she meets the requirements set forth in Appendix A to this document, which is incorporated herein by reference.

List 2. Felony F through I List: Includes Felony F through I Cases and Felony Misdemeanor Probation Violations. In addition to Misdemeanor List requirements, an attorney who has been licensed to practice law for two years or more may submit his or her name to be included on the Felony F through I List if:

He or she meets the requirements set forth in Appendix A to this document, which is incorporated herein by reference.

List 3. Felony A through E List: In addition to Felony F through I List requirements, an attorney who has been licensed to practice law for not less than five years may submit his or her name to be included on the Felony A through E List if:

He or she meets the requirements set forth in Appendix A to this document, which is incorporated herein by reference.

An attorney on this list may also represent a defendant who is under seventeen years of age and charged with a Class A felony as described in I.B., above.

List 4. Juvenile Cases: Class 1 to 3 Misdemeanors, Motions for Contempt, Motions for Review:

An attorney who has been licensed to practice law may be included on the list maintained by the Council for Children's Rights if:

He or she meets the requirements set forth in Appendix B to this document, which is incorporated herein by reference.

List 5A. Juvenile Cases: Class A1 Misdemeanors, Class F to I Felonies, Probation Violations, Motions for Review – An attorney who has been licensed to practice law may be included on the Juvenile List 5A maintained by the Council for Children's Rights if:

1. He or she meets the requirements set forth in Appendix B to this document, which is incorporated herein by reference.

List 5B. Juvenile Cases: Class A to E Felonies, Motions for Review – An attorney who has been licensed to practice law may be included on the list maintained by the Council for Children's Rights if:

He or she meets the requirements set forth in Appendix B to this document, which is incorporated herein by reference.

Attorneys on this list will also be appointed misdemeanors or felonies of any class in which the respondent juvenile is accused of committing the misdemeanor or felony.

All attorneys on the indigent juvenile lists must understand that in all juvenile cases speedy representation is of the essence. Almost all cases, by the time they are processed and in the hands of an attorney, will require a court appearance within three days. Therefore, any attorney who wishes to be appointed to juvenile cases must understand that being placed on the juvenile list will necessitate being available to accept appointments on short notice.

List 6. Special Proceedings List: In addition to General Requirements, an attorney licensed to practice law may be included on the Special Proceedings List if:

1. In involuntary commitment proceedings under Chapter 35A of the North Carolina General Statutes—he or she is competent to represent respondents.
2. Protective services proceedings for disabled adults as defined in Chapter 108A of the North Carolina General Statutes—he or she is competent to represent respondents.
3. Incompetency proceedings—he or she is competent to represent respondents.
4. Judicial waiver of parental consent to abortion proceedings—he or she is competent to represent the requesting minor.

List 7. Child Support Enforcement Actions: An attorney licensed to practice law may be included on the Child Support Enforcement List to represent the child support obligor or the person attempted to be held in contempt for whatever purpose if:

He or she is competent to represent persons charged with contempt for violation of child support enforcement orders.

List 8. Parent Representation List: An attorney who has been licensed to practice law for three

years or more may be included on the Parent Representation List to represent parents in abuse, neglect, and dependency cases and in proceedings to terminate parental rights if:

1. He or she has demonstrated proficiency in the field of abuse/neglect/dependency proceedings and termination of parental rights proceedings and agrees to comply with and has knowledge of the standards of practice applicable to these proceedings, and has completed training and read materials designated by the court and the Mecklenburg County Bar; and
2. Two attorneys who are not in the applicant's law firm and not from the same law firm, and who have engaged in the practice of law for not less than five years, have stated in writing that they believe the applicant is competent to represent the parents of juveniles subject to abuse/neglect /dependency proceedings, and termination of parental rights proceedings, and that they recommend that he or she be included on the list; and
3. He or she is competent to represent parents in these proceedings.

In any case in which a petition for termination of parental rights is filed, unless good cause exists, the same attorney should be appointed to represent the parent in the termination proceeding if the parent has been represented by that attorney in the abuse, neglect, and dependency proceeding.

List 9. Motion for Appropriate Relief (Non-Capital) List: In addition to General Requirements, an attorney who has been licensed to practice law for two years or more may be included on the Motion for Appropriate Relief List (Non-Capital) if:

1. He or she has demonstrated proficiency in the field of criminal trial practice, and
2. Two attorneys who are not in the applicant's law firm and not from the same law firm, and who have engaged in the practice of criminal law for not less than five years, have stated in writing that they believe the applicant is competent to represent criminal defendants charged with felonies and that they recommend that he or she be included on the list, and
3. He or she is competent to represent criminal defendants on motions for appropriate relief.

D. Emergency Representation in Adult Cases

All attorneys on the indigent lists should understand that in most criminal cases speedy representation is of the essence. Many cases, by the time they are processed and in the hands of an attorney, will require a court appearance within five days. For the purposes of these regulations, a case requiring a court appearance within five working days from the time the notice of appointment is received in the office of the Public Defender is to be designated as an "Emergency" case. Emergency cases shall be assigned by rotation only to those attorneys on the Misdemeanor and Felony Lists who have indicated their willingness to accept such cases. Usually, this requires that the attorney come to the Public Defender's Office to pick up the paperwork or receive a telefax. It is expected, based on past experience, that these attorneys will receive more cases than those not on the emergency designation. Therefore, any attorney who wishes to be appointed to emergency cases should so indicate his or her willingness to accept such cases. The attorneys so indicating will be noted on the lists.

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. Maintaining regular contact with clients.
2. Appearing in court on their clients' court dates.
3. Reporting a North Carolina State Bar Complaint that has been lodged against them to the Public Defender or appointing authority within ten (10) days of the attorney's answer to the complaint. Attorneys on the Indigent Appointment List are expected to inform the Public Defender of the results of any North Carolina State Bar disciplinary action.
4. Declining 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. Conducting an initial interview within three business days of any client in custody after counsel receives notice of assignment to the client's case, absent exceptional circumstances.
6. Fully informing the client as to the status of his/her case.
7. Advising the client 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 or contact the Public Defender for reassignment. If notice of appeal is to the appellate courts, the attorney shall assist the defendant in applying for assistance of appellate counsel.
8. Providing competent representation to clients.

Failure to provide minimum standards of representation as set forth above, as set forth in local practice, and as set forth by the North Carolina State Bar 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 other provisions of law. Nothing in these regulations shall preclude the Office of Indigent Defense Services from adopting and enforcing standards and rules that supplement or supercede these regulations or from implementing programs, plans, or contracts regarding the assignment of counsel to improve quality, efficiency, and economy.

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

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

Before assuming responsibility for direct representation of clients in cases not handled by the Public Defender prior to the adoption of these regulations, the Public Defender shall obtain the approval of the Office of Indigent Defense Services.

XII. Adoption and Certification

These regulations were adopted by Public Defender Kevin Tully and the Indigent Representation Committee of the Mecklenburg County Bar, and became effective on October 18, 2011.

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

APPENDIX A

QUALIFICATION STANDARDS FOR PRACTICE IN NON-CAPITAL CRIMINAL COURT IN MECKLENBURG COUNTY, NORTH CAROLINA (Effective October 18, 2011)

The requirements in Section II apply to attorneys who have active status with the North Carolina State Bar but have not recently practiced in non-capital criminal court prior to the adoption of these standards. Exemptions from these requirements are set forth in Section III.*

I. Definitions

1. Non-Capital Criminal Defense Training: Training devoted to non-capital criminal defense, as well as special topics relevant to indigent defense, ethics, and defender resources, provided by an approved training provider.
2. Approved Training Provider: The Mecklenburg County Bar, the North Carolina Office of Indigent Defense Services, the UNC School of Government, the North Carolina Bar Association, the North Carolina Advocates for Justice, or another entity designated by the Office of the Mecklenburg County Public Defender, the Mecklenburg County Bar or the North Carolina Office of Indigent Defense Services.

All attorneys approved to represent indigent adults in non-capital criminal matters are required to maintain active status with the North Carolina State Bar and must adhere to the Indigent Defense Services Performance Guidelines. Any attorney who fails to maintain active status may be removed from list.

II. Requirements

Qualification Standards:

Observation: An applicant who intends to practice in indigent defense matters in Mecklenburg County must observe the following court proceedings at the Mecklenburg County Courthouse prior to being assigned a case. All observations shall be signed off by a Criminal Court Judge:

- a. one morning session of District Administrative Court, currently held in Courtroom 1130
- b. one session of District Domestic Violence Trial Court, currently held in Courtroom 4130
- c. one session of District Trial Court, currently held in Courtrooms 4150, 4170 and 4310
- d. one morning session of Probation Violation Trial Court, currently held in Courtroom 4330

Training: The attorney must complete at least 6 hours of Non-Capital Criminal Defender Training.

Materials: The attorney must have visited both the NC IDS website (www.ncids.org) and the UNC School of Government's website (www.sog.unc.edu) and certify that he or she has familiarized himself or herself with the following documents and videos:

- a. NC Defender Manual – www.ncids.org, 'Reference Manuals;' 'Defender Manual'
- b. NC Performance Guidelines – www.ncids.org, 'IDS Rules & Procedures,' 'Performance Guidelines for Indigent Defense Representation in Non-Capital Criminal Cases at Trial Level' - <http://www.ncids.org/Rules%20&%20Procedures/Performance%20Guidelines/Trial%20Level%20Final%20Performance%20Guidelines.pdf>
- c. 26th Judicial District Policies and Procedures Concerning Court Appointed Counsel (November 2010) - <http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/1488.pdf>
- d. Criminal Case Management Plan (CCMP) and Administrative Order Adopting Criminal Rules, 26th Prosecutorial/Judicial District, Mecklenburg County, Statement of Intent and Summary of Basic Process (July 2010) - <http://www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/1168.pdf>
- e. Ethics and Practice – Billing in Appointed Cases (watch all 6 videos) - <http://www.sog.unc.edu/node/645>
- f. 2011 Criminal Law “Lunchinar” Series, Part III: Race & Criminal Justice System - <http://www.sog.unc.edu/node/1670/>
- g. 2011 Criminal Law “Lunchinar” Series, Part II: Calculating Jail Credit - <http://www.sog.unc.edu/node/1671>
- h. Developing an Investigation and Discovery Plan - <http://www.sog.unc.edu/node/1644>
- i. Understanding Addiction and Drugs of Abuse - <http://www.sog.unc.edu/node/1629>

Mentoring: Once approved, an attorney will be assigned a mentor by the Mecklenburg County Bar. The attorney must submit the Mentor Agreement, signed by the mentor, prior to receiving cases.

List 1 - Misdemeanor Cases and Misdemeanor Probation Violation Cases

Prior to Approval:

Experience: The applicant must be a duly licensed attorney and a member of active status with the North Carolina State Bar.

Qualification Standards: The applicant must complete the qualification standards listed above.

List 2 - Felony F through I Cases and Felony Probation Violation Cases

Prior to Approval:

Experience:

1. He or she has been licensed to practice law for two years or more, has demonstrated proficiency in the field of criminal trial practice and is competent to represent criminal defendants charged with felonies up to and including punishment level of Class F.
2. He or she has either conducted a criminal jury trial of his/her own, or has observed a criminal jury trial from start to finish as certified by a criminal court judge.

Qualification Standards: The applicant must complete the qualification standards listed above.

Recommendations: Two attorneys who are not in the applicant's law firm and not from the same law firm, who have engaged in the practice of law for not less than five years, and who have felony experience, have stated in writing that they believe the applicant is competent to represent criminal defendants charged with felonies and that they recommend that he or she be included on the list

List 3. Felony A through E Cases

Prior to Approval:

Experience: He or she has been licensed to practice law for not less than five years, has demonstrated proficiency in the field of criminal trial practice and is competent to represent criminal defendants charged with serious felony crimes.

Qualification Standards: The applicant must complete the qualification standards listed above.

Recommendations: Two attorneys who are not in the applicant's law firm and not from the same law firm, who have engaged in the practice of law for not less than five years, and who have serious felony experience, have stated in writing that they believe the applicant is competent to represent defendants charged with serious felonies above Class F, excluding capital felonies, and that they recommend that he or she be included on the List.

III. Exemptions may be considered from the above qualification standards:

1. For attorneys who have active status and have practiced **non-capital criminal indigent defense in the 26th District of North Carolina** prior to the adoption of these standards, the exemptions to be considered of the above qualification standards are as follows:

* All references to "active status" will be revisited once the North Carolina State Bar has finalized their definition of good standing.

An attorney who wishes to be placed on **List 1** must have recently defended clients in criminal court on a consistent basis for at least one year.

An attorney who wishes to be placed on **List 2** must have recently defended clients with **felony charges** on a consistent basis for at least two years.

An attorney who wishes to be placed on **List 3** must have recently defended clients with **serious felony charges** on a consistent basis for at least three years.

2. For attorneys who have active status and have practiced **non-capital criminal indigent defense outside the 26th District of North Carolina** prior to the adoption of these standards, the exemptions to be considered of the above qualification standards are as follows:

An attorney who wishes to be placed on **List 1** must have recently defended clients in criminal court on a consistent basis for at least one year, must certify that he or she has familiarized himself or herself with the documents and videos listed in Section II of this Appendix, and must observe the Courtrooms listed in Section II of this Appendix.

In addition to the Misdemeanor List requirements an attorney who wishes to be placed on **List 2** must have recently defended clients with **felony charges** on a consistent basis for at least two years, must certify that he or she has familiarized himself or herself with the documents and videos listed in Section II of this Appendix, and must observe the Courtrooms listed in Section II of this Appendix.

An attorney who wishes to be placed on **List 3** must have recently defended clients with **serious felony charges** on a consistent basis for at least three years, must certify that he or she has familiarized himself or herself with the documents and videos listed in Section II of this Appendix, and must observe the Courtrooms listed in Section II of this Appendix.

APPENDIX B

QUALIFICATION STANDARDS FOR PRACTICE IN JUVENILE DELINQUENCY COURT IN MECKLENBURG COUNTY, NORTH CAROLINA (Effective October 18, 2011)

The requirements in Section II apply to attorneys who have active status with the North Carolina State Bar but have not recently practiced in juvenile delinquency court or adult criminal court prior to the adoption of these standards. Exemptions from these requirements are set forth in Section III.*

I. Definitions

1. Juvenile Delinquency Training: Training devoted to juvenile law and procedure, as well as special topics relevant to juvenile court, such as ethics, client contacts, adolescent development, mental health, special education, substance abuse, and cultural issues, provided by an approved training provider.
2. Approved Training Provider: The Mecklenburg County Bar, the North Carolina Office of Indigent Defense Services, the UNC School of Government, the North Carolina Bar Association, the North Carolina Advocates for Justice, the Council for Children's Rights, or another entity approved or provided by the North Carolina Office of the Juvenile Defender or the North Carolina Office of Indigent Defense Services.

All attorneys approved to represent juveniles in delinquency matters are required to maintain active status and must adhere to the Indigent Defense Services Performance Guidelines.

II. Requirements

List 4 - Juvenile Cases: Class 1 to 3 Misdemeanors, Motions for Contempt, Motions for Review Prior to Approval:

Experience: The applicant must be a duly licensed attorney and maintain active status with the North Carolina State Bar.

Observation: An applicant who intends to practice in juvenile delinquency matters in Mecklenburg County must shadow an attorney who has been practicing for at least three years in juvenile court for a full day and must observe the following court proceedings prior to being assigned a case. All observations shall be signed off by a Juvenile Court Judge:

- a. Detention Hearing
- b. First Appearance Hearing
- c. Arraignment Hearing
- d. Motion for Review Hearing
- e. Disposition Hearing

Court Counselor Office Orientation: The applicant must certify to the Children's Defense Team,

* All references to "active status" will be revisited once the North Carolina State Bar has finalized their definition of good standing.

Council for Children’s Rights and the Committee that the applicant has spent no less than one hour becoming familiar with the practices and procedures of the court counselor office in Mecklenburg County, preferably by meeting with the Chief Court Counselor or a Court Counselor Supervisor in Mecklenburg County.

Continuing Requirements:

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

Detention Facility: Within the first year of practice, the applicant must confer with the director of the nearest juvenile detention facility or the director’s designee in person or by telephone and become familiar with detention center policies and procedures and certify compliance to the Children’s Defense Team of the Council for Children’s Rights and the Committee.

List 5A - Juvenile Cases: Class A1 Misdemeanors, Class F to I Felonies, Probation Violations, Motions for Review

Prior to Approval:

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

Experience: The applicant must have recently practiced in juvenile delinquency or adult criminal court on a consistent basis for at least one full year. In addition, the applicant needs to have practiced in Superior Court previously or meet/mentor with an attorney who has.

Continuing Requirements:

Training: The attorney must complete at least three hours of juvenile delinquency training every other year to maintain eligibility to represent juveniles.

List 5B - Juvenile Cases: Class A to E Felonies, Motions for Review

Prior to Approval:

Previous Requirements: The applicant must have successfully completed all of the requirements of List 4 and 5A.

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

Special Qualifications: The applicant shall continue to represent a juvenile if the juvenile’s case is transferred to Superior Court and the applicant is qualified by the Public Defender and the Committee to represent adults in felony cases in Superior Court.

* All references to “active status” will be revisited once the North Carolina State Bar has finalized their definition of good standing.

Continuing Requirements:

Training: The attorney must complete at least three hours of juvenile delinquency training every other year so long as the attorney continues to represent juveniles in delinquency court.

III. Exemptions from the above requirements:

1. For attorneys who have an active status with the NC State Bar and have practiced in **juvenile delinquency court** prior to the adoption of these standards, the qualification standards are as follows:

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

An attorney who wishes to be placed on **List 5A** must have recently practiced in juvenile delinquency court on a consistent basis for at least two full years, and have completed at least three contested juvenile delinquency hearings, including at least one misdemeanor adjudicatory hearing and one felony adjudicatory hearing. Within two years of the initial approval, the attorney must complete three hours of juvenile delinquency training and certify compliance to the Children’s Defense Team of the Council for Children’s Rights and the Committee.

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

2. For attorneys who have an active status with the NC State Bar and have practiced in **adult criminal court** prior to or after the adoption of these standards, the qualification standards are as follows:

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

* All references to “active status” will be revisited once the North Carolina State Bar has finalized their definition of good standing.

An attorney who wishes to be placed on **List 5A** must have recently practiced in adult criminal (District or Superior) court on a consistent basis for at least two full years, and have completed the Observation and Court Counselor Office Orientation requirements under List 4. Within one year of the initial approval, the attorney must complete three hours of juvenile delinquency training and certify compliance to the Children's Defense Team of the Council for Children's Rights and the Committee.

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

3. Council for Children's Rights attorneys who are assigned to delinquency court may be exempt from the experience requirements if: (1) all other requirements under the respective lists are satisfied; and (2) an experienced member of the Council for Children's Rights staff is available to assist the attorney when requested.
4. Continuing Training Requirement: An attorney qualified under these exemption provisions must complete at least three hours of juvenile delinquency training every other year so long as the attorney continues to represent juveniles in delinquency court.