

REGULATIONS FOR APPOINTMENT OF COUNSEL IN DEFENDER DISTRICT 29A (RUTHERFORD AND MCDOWELL COUNTIES) IN CASES UNDER THE INDIGENT DEFENSE SERVICES ACT

I. Applicability

A. Generally

These regulations are issued pursuant to Rule 1.5 of the Rules for the *Continued Delivery of Services in Non-Capital and Non-Criminal Cases at the Trial Level*. They apply to all non-capital criminal and non-criminal cases in the trial division in Defender District 29A 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 Defender District 29A 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 the 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, the appellate entries made by the court shall reflect that appeal is taken by operation of law and that the Director of the IDS Office has appointed the Office of Appellate Defender. See Rule 2B.2(a) of *Rules for Providing Legal Representation in Capital Cases*.

II. Administration of Regulations

The Public Defender in Defender District 29A (hereinafter "Public Defender") is responsible for administering these regulations. The Public Defender shall coordinate with the court and the local bar to ensure that these regulations are applied in a fair and impartial manner.

The Public Defender shall designate a member of his or her staff as Administrator of these regulations to keep current the lists of attorneys eligible for appointment and perform such other duties as the Public Defender may determine.

III. Determination of Entitlement to Counsel

In each case subject to these regulations, the court shall determine whether a person is entitled to have counsel appointed to represent him or her in the particular case. In cases in which the person must be

indigent to receive counsel, the court shall determine indigency. When these regulations describe the functions that a court performs, the term “court” includes the Clerk of Superior Court. Entitlement to the appointment of counsel begins as soon as practicable after the indigent is taken into custody or is served with the warrant, notice, or other initiating process. Whenever a person is entitled to the appointment of counsel but the appropriate court is not in session and will not be in session within the next 48 hours, the Clerk of Superior Court shall make a determination of indigency and shall appoint counsel as provided by G.S. 7A-452(c) and these regulations. Appointment of counsel with respect to a particular charge or proceeding shall continue until final disposition of that charge or proceeding at the trial level, including all critical stages thereof as set forth in G.S. 7A-451(b), unless the attorney is relieved of his or her appointment by the court.

IV. Appointment of Public Defender’s Office

A. Cases Covered

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

1. Defendants in criminal cases (including defendants charged with criminal nonsupport but not including defendants charged with criminal contempt for failing to pay child support);
2. Juveniles in cases in which the juvenile is alleged to be delinquent;
3. Respondents in involuntary commitment matters;
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.

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

B. Notice to Client

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

C. 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 in these Regulations and any criteria approved by IDS. If the Public Defender has appeared in the case before discovering a conflict, the Public Defender shall also file a motion to withdraw with the court.

D. Preliminary Determination

Prior to the court’s determination of entitlement to counsel in any of the matters listed above, the Public Defender may pursuant to G.S. 7A-452(a) tentatively assign an attorney from his or her office to represent a person whom the Public Defender determines is entitled to counsel. To help assure the prompt appointment of counsel for in-custody persons, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the Public

Defender pursuant to G.S. 7A-453(a). Tentative appointments by the Public Defender under this provision are subject to later approval of the court.

V. Assignments by Public Defender

A. Determination

As soon as practicable after learning of an appointment, the Public Defender shall determine whether to assign the case to an assistant public defender or to private counsel. Subject to standards approved by the Office of Indigent Defense Services and paragraph IV(C), the Public Defender may assign cases to private counsel based on, among other factors, the caseloads of the assistant public defenders in his or her office. If the Public Defender assigns a case to private counsel, he or she shall record the reasons for doing so.

B. Conflicts

If the Public Defender determines that his or her office is unable to handle a case because of a conflict, the Public Defender shall assign the case to private counsel in accordance with the regular rotation in these Regulations and any criteria approved by the Office of Indigent Defense Services. If the Public Defender has appeared in the case before discovering a conflict, the Public Defender shall move to withdraw before assigning the case to new counsel and the Court shall assign the case to private counsel as provided in Article VI below.

C. Order of Appointments

1. The Public Defender shall maintain in his or her office lists of attorneys, duly qualified pursuant to Articles VIII and IX below, to handle cases appointed by the Public Defender. Such lists shall be made reasonably available to the public upon request.
2. If the Public Defender finds that the case should be assigned to private counsel, the Public Defender shall assign an attorney from the appropriate list. No appointment shall be made by the Public Defender of an attorney whose name does not appear on one of the lists on file with the Public Defender's Office. In exceptional circumstances, the Public Defender may appoint an attorney who is not on the list with that attorney's consent.
3. The Public Defender shall assign attorneys in a strict rotation in which they appear on the list except as permitted by these regulations. The Public Defender may appoint an attorney who is not next in sequence if an attorney is unavailable, an attorney has a conflict, another attorney is representing the particular client, or the interests of justice require the appointment of a specific attorney instead of the next available attorney. If the Public Defender passes over the name of an attorney, the Public Defender shall return to the attorney for the next appointment unless the attorney has indicated that he or she is unavailable, in which case that attorney will be appointed when his or her name appears in the normal sequence of appointments.
4. The Public Defender shall make a record of appointments and make the same reasonably available to the public on request. If the Public Defender appoints an attorney who is not next in sequence, the Public Defender shall record the reasons for doing so.

D. Notice

If the Public Defender assigns an assistant public defender to a case, the Public Defender shall enter that information in the Case Management System. If the Public Defender assigns a case to private counsel, the Public Defender shall furnish a notice of appointment to the attorney and shall enter the appointment information in the Case Management System. Upon assigning a case to private counsel, the Public Defender shall furnish to the client instructions about contacting his or her attorney.

E. Withdrawal

Once the Public Defender has issued a notice of appointment of private counsel, only the court may permit the attorney to withdraw. If the court permits the attorney to withdraw, the Public Defender shall assign the case to an assistant public defender or to a new private attorney. If the Public Defender has a conflict in Superior Court, the court shall assign new counsel.

F. Multiple Counsel

1. In assigning cases to private counsel, the Public Defender shall appoint the same attorney on all pending matters concerning the defendant or respondent if the attorney is on the appropriate list. Where a criminal defendant is discharged after a finding of no probable cause in District Court but is later indicted in Superior Court, 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 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 matter for which the attorney is not on the appropriate list, the attorney shall notify the Public Defender. If requested by the Public Defender, the attorney shall move to withdraw from the case so that the Public Defender may appoint all of the matters to other counsel who is on all of the appropriate lists.

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

G. Requests for Substitution of Counsel

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

VI. Appointment of Private Counsel by Court

A. Cases Covered

For persons entitled to counsel in the matters listed below, the court shall appoint counsel in accordance with the procedures described in this article:

1. Respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes;
2. Defendants charged with contempt in child support enforcement matters;
3. Parents in cases in which a juvenile is alleged to be abused, neglected, or dependent;
4. Minors requesting judicial waiver of parental consent to abortion;
5. Respondents in petitions for termination of parental rights;
6. Persons responding to show cause orders for contempt of court;
7. 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;
8. Persons found to be material witnesses by the court;
9. Respondents in proceedings for the provision of protective services according to Chapter 108A, Article 6, of the General Statutes;
10. Respondents in proceedings for sterilization under Chapter 35, Article 7 (sterilization of persons mentally ill and mentally retarded);
11. 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;
12. Any other person who has a right to appointed counsel that is not otherwise described in this article or in Article IV above.

The Indigent Defense Services Act and these regulations do not cover assignments of counsel for juveniles alleged to be abused, neglected, or dependent.

B. Order of Appointments

1. The Clerk of Superior Court shall maintain in his or her office master lists of attorneys, duly qualified under Articles VIII and IX, to handle cases appointed by the court. The Public Defender, in consultation with the Committee on Indigent Appointments, shall prepare and provide to the clerk such master lists, which shall be made reasonably available to the public upon request. The Clerk of Court shall distribute copies of such master lists to each courtroom and the court shall assign attorneys from such lists as provided below.

2. If the court determines that a person is entitled to counsel, the court shall assign an attorney from the appropriate list. No appointment shall be made by the court of an attorney whose name does not appear on one of the master lists on file with the Clerk of Superior Court. In exceptional circumstances, the Public Defender may appoint an attorney who is not on the list with that attorney's consent.

3. The court shall assign attorneys in a strict rotation in the sequence in which they appear on the list except as permitted by these regulations. However, the court has inherent authority to appoint an attorney who is not next in sequence on the list if an attorney is unavailable, an attorney has a conflict, another attorney is already representing the particular client, or the interests of justice require that a specific attorney be appointed rather than the next available attorney. If the court passes over the name of an attorney for a reason other than the attorney's unavailability, the court shall return to that attorney for the next appointment to the extent administratively feasible.

4. The court shall record on a form provided by the Public Defender the appointments it makes and shall provide the record to the Public Defender on a monthly basis. If the court appoints an attorney who is not next in sequence, the court shall record the reasons for doing so. This record shall be made available to the public upon request to the Public Defender.

C. Notice

Upon assigning a case to private counsel, the court shall furnish the notice of appointment to the attorney and shall furnish to the client on a form provided by the Public Defender instructions about contacting his or her attorney. 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.

D. Multiple Counsel

1. In assigning cases to private counsel, the court shall seek to appoint the same attorney on all pending matters concerning the defendant or respondent if the attorney is on the appropriate list.

2. If an attorney is appointed to represent a client on one matter and the attorney learns that the client requires representation on another matter for which the attorney is not on the appropriate list, the attorney shall notify the court. The court may remove the attorney from the case so that the court may assign all of the matters to other counsel who is on all of the appropriate lists.

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

VII. Committee on Indigent Appointments

A. Establishment of Committee

There is hereby established the Committee on Indigent Appointments (hereinafter "Committee") to assist the Public Defender with the implementation of these regulations. The Public Defender shall serve as chair of the Committee and shall consult with the Committee as described herein. The failure of any of the appointing authorities to make the appointments described below, or the failure of the

Committee to meet or do any of the things authorized by these regulations, shall not preclude the Public Defender or Court of competent jurisdiction from performing any of the duties or taking any of the actions authorized by these regulations.

B. Membership of Committee and Terms

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

- a. One position designated as Senior Resident Judge position, to be appointed by the Senior Resident Judge;
- b. One position designated as District Court Judge position, to be appointed by the Chief District Court Judge;
- c. One position designated as McDowell County Bar position, to be appointed by the President of the McDowell County Bar;
- d. One position designated as Rutherford County Bar position, to be appointed by the President of the Rutherford County Bar
- e. One position designated as Public Defender position, to be appointed by the Public Defender.
- f. One position designated as McDowell Clerk of Court position, to be appointed by the McDowell County Clerk of Superior Court
- g. One position designated as Rutherford Clerk of Court position, to be appointed by the Rutherford County Clerk of Superior Court

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.

C. Qualifications

Other than the Public Defender or assistant public defenders, members of the Committee shall be attorneys who:

1. Have practiced in one or more of the areas covered by the appointment lists for not less than five (5) years in Defender District 29A; and
2. Are knowledgeable about practicing attorneys in in Defender District 29A.

D. Meetings

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

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

E. Responsibilities

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

1. Review requests from attorneys concerning placement on the various appointments lists;
 2. Make recommendations regarding placement or removal of attorneys from the various appointment lists;
 3. Make recommendations regarding the number and type of lists and qualifications to be on the lists;
 4. Make any other recommendations regarding the operation of the local indigent defense program.
- In consultation with the Committee, the Public Defender shall establish procedures for the carrying out of the Committee's business, including establishing such subcommittees as may be necessary to assist the Committee. Such subcommittees may consist of people who are not members of the Committee.

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 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 Article IX for placement on the list. All materials required by Article IX must be attached to the request.
2. An attorney who wishes to have his or her name removed from a list shall file a written request with the Committee, and the Committee shall remove the attorney's name from the list and notify the court and any other interested parties. If an attorney has had his or her name removed from a list, the attorney must reapply to be on that list.
3. An attorney who wishes to transfer from one list to another shall file a written request with the Committee. The Committee shall grant the request if the attorney wishes to transfer to a list for which the attorney has already met the qualifications by virtue of being on the list from which the attorney is being removed. All other requests shall include the materials required by Article IX and any other information that will facilitate the Public Defender's and Committee's determination whether the attorney meets the standards set forth in Article IX for placement on the particular list.

B. Addition to List

In consultation with the Committee, the Public Defender shall determine whether the attorney meets all of the applicable standards in Article IX. The Public Defender shall assure that the requesting attorney is given prompt 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 shall afford to the Committee the opportunity to review each request by an attorney to be added to a list and to recommend to the Public Defender whether the attorney should be added to the list. The Public Defender 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 waives any confidentiality of such inquiries. The Committee may hold a request in abeyance for a reasonable period of time while obtaining additional information.

C. Removal from List

In consultation with the Committee, the Public Defender may remove an attorney from a list if at any time an attorney no longer meets the standards set forth in Article IX for the list on which he or she is placed, does not meet the performance standards in Article XI, or otherwise fails to meet the responsibilities of representation including, but not limited to, billing in compliance with the Rules of the Commission on Indigent Defense Services, all local rules, and the Revised Rules of Professional Conduct. However, if the Public Defender finds that one of these conditions exists, but is temporary and remediable, the Public Defender may temporarily suspend the attorney from the list. With the attorney's consent, the Public Defender may place the attorney's name on a list for which the attorney is qualified by virtue of being on the list from which the attorney was removed.

The Public Defender 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 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.

IX. Lists of Attorneys

A. General Requirements

To be eligible to be included on any of the lists provided for herein, an attorney must:

1. Be licensed to practice in North Carolina;

2. Maintain an office in the county corresponding to the list for which the attorney is making application or be otherwise able to meet with clients in the county corresponding to the list for which the attorney is making application and must demonstrate this ability to meet with clients in that respective county to the Committee; and

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

B. Provision of Lists

The Public Defender or his or her designee shall provide to the court the current list of attorneys subject to appointment in Defender District 29A. The Public Defender or his or her designee shall update the list at least every three months if there are additions or deletions.

C. Lists

List 1: Misdemeanor Case and Misdemeanor Probation Violations

Attorneys on List 1 will represent indigent persons accused of misdemeanors and misdemeanor probation violations in the District and Superior Courts. 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 in district court shall continue their representation of the defendant in superior court.

Requirements: To qualify for List 1, a significant portion of the attorney's practice must be or must be expected to be criminal law and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in misdemeanor cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

List 2: Class E – I Felonies and Felony Probation Violations

An attorney on List 2 will represent indigent persons accused of felonies from classes E through I and felony probation violations in the District and Superior Courts. An attorney on List 2 will also be appointed to represent existing clients on new or pending misdemeanor charges, including, if necessary, trial de novo if the client exercises his or her right to a jury trial. An attorney on list 2 may elect to receive appointments for class H and I felonies only, but must notify the Public Defender in writing of this election.

Requirements: To qualify for List 2, an applicant attorney must have been licensed to practice law for at least two (2) years and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in felony cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also demonstrate that he or she is competent to try a superior court case before a jury and otherwise has the ability to handle felony cases in superior court. The applicant must have tried as lead or co-counsel at least one (1) jury trial to verdict. This trial experience requirement can be fulfilled by showing that the attorney has attended at least twelve (12) hours of continuing legal education in the area of criminal jury trials.

List 3: Class A – D Felonies

An attorney on List 3 will represent indigent persons accused of felonies from classes A through D in the District and Superior Courts subject to I.B. above. A lawyer on List 3 will also be appointed to represent the client on new misdemeanors or non-capital felony charges of any class or misdemeanors or non-capital felony charges of any class pending at the time of the original appointment on the felony cases. The attorney will also be expected to represent any misdemeanor client who exercises the right to trial de novo in superior court after conviction of a misdemeanor in district court.

Requirements: To qualify for List 3, an applicant attorney must have been licensed to practice law for at least three (3) years and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in serious felony cases in superior court and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must have tried as lead counsel or individually at least three (3) criminal jury trials to verdict.

List 4A: Juvenile Misdemeanor Cases, Probation Violations and Class H and I Felonies

Attorneys on List 4A will represent juveniles alleged to be delinquent, where the petition alleges a felony or misdemeanor offense, a motion for review, or alleged to be in Chapter 5A contempt.

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

List 4B: Juvenile Felonies D – G

Attorneys on List 4B will represent juveniles alleged to be delinquent where the petition alleges class D through G felonies. Attorneys on this list will also be appointed misdemeanors or felonies of any class in which the respondent juvenile is accused of committing the misdemeanor or felony.

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

List 4C: Juvenile Felonies A – C

Attorneys on List 4C will represent juveniles alleged to be delinquent where the petition alleges class A through C felonies. Attorneys on this list will also be appointed misdemeanors or felonies of any class in which the respondent juvenile is accused of committing the misdemeanor or felony.

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

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.

Attorneys for matters in (d) will be appointed by the Public Defender.

Requirements: To qualify for List 5, the applicant attorney must be familiar with the relevant specialized areas of law, including the North Carolina laws governing incompetency proceedings, and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in cases listed in this category and will apply that knowledge and skill with appropriate thoroughness and preparation. The attorney must also maintain a working telephone number, an email address, and a courthouse box.

In addition to the above requirements, to qualify for List 5.a., the applicant attorney must certify that he or she has read Article 35A, Subchapter 1 of the North Carolina General Statutes and Responsibilities of Guardians in North Carolina (AOC-SP-850) and has reviewed the Guardianship Manual available from the UNC School of Government, available at <https://www.sog.unc.edu/publications/books/north-carolina-guardianship-manual>.

List 6: Child Support Enforcement Actions

Attorneys on this list agree to accept child support enforcement cases representing the child support obligor or the person attempted to be held in contempt for whatever purpose.

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

List 7A: Parent Representation in Abuse/Neglect/Dependency Cases

Attorneys on this list will represent indigent parents in abuse, neglect, and dependency cases.

Requirements: To qualify for this list, the attorney must submit a written request to the Committee on Indigent Appointments and demonstrate to the Committee that the attorney:

- a. Maintains an office in accordance with Article IX or is otherwise able to meet with clients in accordance with Article IX.;
- b. Has a local working telephone number at which he or she can be readily contacted, as well as a mobile telephone at which the attorney can be reached during court in the event that he or she is not in the courtroom when a case is called for hearing;

- c. Possesses a working facsimile machine to receive juvenile abuse, neglect, or dependency petitions, as well as a working email address;
- d. Has read G.S. 7B-100 through 7B-1112 and G.S. 7B-2900 through 7B-2901 in their entirety, and is competent with respect to the provisions of the Juvenile Code and the Rules of Juvenile Court that govern abuse, neglect, and dependency proceedings;
- e. Has read the North Carolina Commission on Indigent Defense Services' "Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency or Termination of Parental Rights Proceedings at the Trial Level" in their entirety, is committed to incorporating these guidelines into practice, and will comply with these guidelines;
- f. Has observed a minimum of eight (8) contested or uncontested disposition, review, and/or permanency planning hearings, which observation shall be certified by the presiding judge;
- g. Has observed a contested adjudication in its entirety, which shall be certified by the presiding judge;
- h. Has signed a written acknowledgement that the attorney understands and agrees to follow certain policies, procedures, guidelines, and rules that are, or may be, established for juvenile abuse/neglect/dependency court, including, but not limited to, these Rules and the North Carolina Commission on Indigent Defense Services' "Performance Guidelines for Attorneys Representing Indigent Parent Respondents in Abuse, Neglect, Dependency or Termination of Parental Rights Proceedings at the Trial Level;" and
- i. Will complete at least one (1) hour of continuing legal education regarding abuse/neglect/dependency issues every two (2) years. If an attorney fails to comply with the continuing education requirement, that attorney shall be placed on inactive status by the Committee on Indigent Appointments until proof of compliance with this mandatory continuing education requirement is provided.

List 7B: Parent Representation in Termination of Parental Rights Cases

Attorneys on this list will represent indigent parents in proceedings to terminate parental rights. In any case in which a petition for termination of parental rights is filed, the court shall unless good cause exists not to do so appoint the same attorney to represent the parent in the termination proceeding if the parent has been represented by that attorney in the abuse, neglect, and dependency proceeding.

Requirements: After an attorney has a minimum of one year of experience representing parents in abuse/neglect/dependency cases, the attorney must timely complete the following remaining requirement(s) to be appointed to represent indigent parents in termination of parental rights cases: The attorney shall demonstrate to the Committee that he or she has satisfied the requirements of List 8A, that he or she has a minimum of one year of experience representing parents in abuse/neglect/dependency cases, and that he or she has observed a minimum of one contested termination of parental rights hearing in its entirety. In the event that an attorney does not meet the one-year minimum experience requirement, but would otherwise be appointed to represent a parent in a termination of parental rights case, the attorney must observe a minimum of one contested

termination of parental rights hearing prior to the hearing scheduled in the appointed parent's case. This observation shall be certified by the presiding judge.

For lists 8A, 8B, and 8C, the Public Defender shall be appointed except in cases where representation by the Public Defender office would be deemed a conflict.

List 8A: Motions for Appropriate Relief (Misdemeanors)

Attorneys on List 8A will represent indigent persons on motions for appropriate relief that have been filed to correct or vacate judgments in misdemeanors.

Requirements: To qualify for this list, the applicant attorney must have been licensed to practice law for at least three (3) years and must demonstrate that he or she has proficiency in the field of criminal trial practice and is competent to represent criminal defendants on motions for appropriate relief. The applicant must submit statements in writing from two (2) attorneys who are not in the applicant's law firm and not from the same law firm who have engaged in the practice of criminal law for not less than five (5) years stating that they believe the applicant is competent to represent criminal defendants in misdemeanor post-conviction matters and that they recommend that the applicant be included on the list.

List 8B: Motions for Appropriate Relief (Class E – I Felonies)

Attorneys on List 8B will represent indigent persons on motions for appropriate relief that have been filed to correct or vacate Class E-I felony judgments.

Requirements: To qualify for this list, the applicant attorney must have been licensed to practice law for at least five (5) years and must demonstrate that he or she has proficiency in the field of criminal trial practice and is competent to represent criminal defendants on motions for appropriate relief. The applicant must have engaged for at least three (3) years in significant criminal trial practice. The applicant must submit statements in writing from two (2) attorneys who are not in the applicant's law firm and not from the same law firm who have engaged in the practice of criminal law for not less than five (5) years that they believe the applicant is competent to represent criminal defendants in felony post-conviction matters and that they recommend that the applicant be included on the list.

List 8C: Motions for Appropriate Relief (Non-Capital Class A-D Felonies)

Attorneys on List 8C will represent indigent persons on motions for appropriate relief that have been filed to correct or to vacate non-capital Class A-D felony judgments.

Requirements: To qualify for this list, the applicant attorney must have been licensed to practice law for at least five (5) years and must demonstrate that he or she has proficiency in the field of criminal trial practice and is competent to represent criminal defendants on motions for appropriate relief. The applicant must have engaged at least five (5) years in significant criminal trials. The applicant must submit statements in writing from two (2) attorneys who are not in the applicant's law firm and not from the same law firm who have engaged in the practice of criminal law for not less than five (5) years stating that they believe the applicant is competent to represent criminal defendants in felony post-conviction matters and that they recommend that the applicant be included on the list. The applicant

must also submit a writing sample from a criminal appeal brief, memorandum of law, or previous motion for appropriate relief.

X. Performance Standards

Attorneys on the Indigent Appointment Lists are expected to provide quality representation for all clients. Minimum standards of representation include, but are not limited to the following:

1. Must maintain regular contact with clients;
2. Must appear on their clients' court dates, absent justifiable excuse (e.g., illness, jury trial, etc.). If scheduling conflicts arise, an attorney should resolve them in accordance with Rule 3.1 of the General Rules of Practice;
3. Must report a North Carolina State Bar Complaint that has been lodged against them to the Public Defender within ten (10) days of the attorney's answer to the complaint. Attorneys on the Indigent Appointment List are expected to inform the Public Defender of the results of any North Carolina State Bar disciplinary action;
4. Shall not receive anything of value from anyone in connection with representation under these regulations during the period of representation, except as permitted by IDS Rule 1.9(e);
5. Must visit incarcerated clients within three (3) days after notification of appointment, absent justifiable excuse (e.g., illness, jury trial, etc.). If necessary, counsel may arrange for a designee to conduct the initial interview;
6. Must keep the client fully informed as to the status of his case;
7. Must advise their clients on a timely basis of the right to appeal, either for trial *de novo* or to the appropriate appellate court and, if the client elects to appeal, the attorney must enter notice of appeal for the client. If notice of appeal is to the Superior Court, the attorney shall continue his or her representation of the client in Superior Court. If notice of appeal is to the appellate courts, the attorney shall assist the defendant in applying for assistance of appellate counsel;
8. Must provide competent representation of clients; and
9. Must adhere to the Rules of Professional Conduct of the North Carolina State Bar.

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

XI. Miscellaneous

Nothing in these regulations shall be construed or applied inconsistently with the IDS Rules or with other provisions of law. Nothing in these regulations shall preclude the Office of Indigent Defense Services from adopting and enforcing standards and rules that supplement or supersede these regulations or

from implementing programs, plans, or contracts regarding the assignment of counsel to improve quality, efficiency, and economy.

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

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

XII. Adoption and Certification

These regulations were adopted by the District 29A Public Defender, and became effective on December 19, 2018.

APPENDIX A

QUALIFICATION STANDARDS FOR PRACTICE IN JUVENILE DELINQUENCY COURT IN DEFENDER DISTRICT 29A

I. Definitions

1. Juvenile delinquency training: Training devoted to juvenile law and procedure, as well as special topics relevant to juvenile court, such as adolescent development, mental health, special education, substance abuse, and cultural issues, provided by an approved training provider.
2. Approved training provider: The Office of the Juvenile Defender, the Office of Indigent Defense Services, the UNC School of Government, the North Carolina Bar Association, the North Carolina Academy of Trial Lawyers, the Center for Children’s Defense, or another entity approved by the Office of the Juvenile Defender or the Office of Indigent Defense Services.
3. Court Sessions: One complete day of court in which juvenile delinquency matters are heard, with the length of the day depending on the number of matters docketed.

II. Requirements

List 4A (Class A1-3 Misdemeanors, Class H-I Felonies, Probation Violations, Motions for Contempt)

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

Observation: In each of the districts in which the applicant intends to practice, the applicant must shadow an attorney who is currently on the list for two court sessions. The applicant must provide to the Public Defender, local Committee on Indigent Appointments (hereinafter “Committee”), and Chief District Court Judge a written statement of the location, date, and time of the sessions.

Court counselor office orientation: The applicant must certify to the Public Defender, Committee, and Chief District Court Judge that the applicant has spent no less than one hour becoming familiar with the practices and procedures of the court counselor office in Rutherford or McDowell County and met with its Chief Court Counselor.

Juvenile rules orientation: The applicant must certify to the Public Defender, Committee, and Chief District Court Judge that the applicant has read and is familiar with the Juvenile Code and The Role of Defense Counsel in Juvenile Delinquency Proceedings, as published by the North Carolina Office of the Juvenile Defender, and the local rules governing juvenile court in District 29A.

DSS orientation: The applicant must certify to the Public Defender, Committee, and Chief District Court Judge that the applicant has met with the county attorney (Rutherford or McDowell) assigned to DSS court to discuss the county’s procedures concerning DSS.

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 must thereafter complete at least three hours of juvenile delinquency training every other year, or such other comparable training as allowed by the Public Defender, Committee, or Chief District Court Judge.

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, become familiar with detention center policies and procedures, and certify compliance to the Public Defender, Committee, and Chief District Court Judge.

Special qualifications: The applicant may continue to represent a juvenile if the juvenile's case is transferred to Superior Court. If the attorney is not qualified by the Public Defender and Committee to represent adults in felony cases in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the Public Defender or the Court as soon as practicable, but no later than prior to the probable cause hearing.

List 4B (Class D-G Felonies)

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

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

Special qualifications: The applicant may continue to represent a juvenile if the juvenile's case is transferred to Superior Court. If the attorney is not qualified by the Public Defender and Committee to represent adults in felony cases in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the Public Defender or the Court as soon as practicable, but no later than prior to the probable cause hearing.

Training: The attorney must complete at least three hours of juvenile delinquency training, or other comparable training, every other year the attorney represents juveniles.

List 4C (Class A-C Felonies)

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

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 may continue to represent a juvenile if the juvenile's case is transferred to Superior Court. If the attorney is not qualified by the Public Defender and Committee to represent adults in felony cases in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the Public Defender or the Court as soon as practicable, but no later than prior to the probable cause hearing.

Training: The attorney must complete at least three hours of juvenile delinquency training, or other comparable training, every other year the attorney represents juveniles.

III. Exemptions

Exemptions from the above requirements:

1. For attorneys who are in good standing 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 4A** must have recently practiced in juvenile delinquency court on a consistent basis for at 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 Public Defender and Committee.

An attorney who wishes to be placed on **List 4B** 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 initial approval, the attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee.

An attorney who wishes to be placed on **List 4C** must have practiced in juvenile delinquency court 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) and at least two hearings 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 Public Defender and Committee. The attorney also must be willing to continue to represent a juvenile if the juvenile's case is transferred to Superior Court and be qualified by the Public Defender and Committee to represent adults in felony cases in Superior Court.

2. For attorneys who are in good standing 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 4A** must have recently practiced in adult criminal (district or superior) court on a consistent basis for at least one full year and have completed the Observation and Court Counselor Office Orientation requirements under List 4A. Within one year of initial approval, the attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee. The applicant must certify to the Public Defender that the applicant has met with the Rutherford/McDowell County attorney assigned to DSS court to discuss Rutherford/McDowell County's procedures concerning DSS. The applicant must certify to the Public Defender that the applicant has spent no less than one hour becoming familiar with the practices and procedures of the court counselor office in Rutherford/McDowell County and met with its Chief Court Counselor.

An attorney who wishes to be placed on **List 4B** 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 4A. Within one year of initial approval, the

attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee. The applicant must certify to the Public Defender that the applicant has met with the Rutherford/McDowell County attorney assigned to DSS court to discuss Rutherford/McDowell County's procedures concerning DSS. The applicant must certify to the Public Defender that the applicant has spent no less than one hour becoming familiar with the practices and procedures of the court counselor office in Rutherford/McDowell County and met with its Chief Court Counselor.

An attorney who wishes to be placed on **List 4C** 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 Officer Orientation requirements under List 4A. Within one year of initial approval, the attorney must complete at least three hours of juvenile delinquency training and certify compliance to the Public Defender and Committee. The attorney also must be willing to continue to represent a juvenile if the juvenile's case is transferred to Superior Court, and be qualified by the Public Defender and Committee to represent adults in felony cases in Superior Court. The applicant must certify to the Public Defender that the applicant has met with the Rutherford/McDowell County attorney assigned to DSS court to discuss Rutherford/McDowell County's procedures concerning DSS. The applicant must certify to the Public Defender that the applicant has spent no less than one hour becoming familiar with the practices and procedures of the court counselor office in Rutherford/McDowell County and met with its Chief Court Counselor.

3. Assistant Public Defenders 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 Public Defender staff is available to assist the assistant public defender when requested.