

# **REGULATIONS FOR APPOINTMENT OF COUNSEL IN CASES UNDER THE INDIGENT DEFENSE SERVICES ACT FOR THE 16B JUDICIAL DISTRICT**

## **I. Applicability**

### **A. Generally**

These regulations are issued pursuant to Rule 1.5 of the Rules for the *Continued Delivery of Services in Non-Capital and Non-Criminal Cases at the Trial Level* (hereinafter “IDS Rules”). They apply to all non-capital criminal and all non-criminal cases in the trial division in the Sixteen B 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 16B Judicial District in cases in which the defendant or respondent was 17 years of age or younger at the time of the alleged offense and is not eligible for the death penalty; in such cases, the Public Defender shall appoint an attorney from his or her office or a private attorney from the appropriate list.
2. In cases in which a person is entitled to appointed counsel pursuant to G.S. 7A-451 with respect to appeal to the appellate division from an adverse ruling in the trial division, the court shall appoint the Office of Appellate Defender, which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Non-Capital Criminal Appeals and Non-Criminal Appeals*. The only exception to this procedure is in cases in which a death sentence has been returned, where the appellate entries made by the court shall reflect that appeal is taken by operation of law and that the Director of the IDS Office has appointed the Office of Appellate Defender. *See* Rule 2B.2(a) of *Rules for Providing Legal Representation in Capital Cases*.

## **II. Administration of Regulations**

The Public Defender in the Sixteen B Judicial District (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 a person must be indigent to receive counsel, the court shall make the determination of 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 except if the Public Defender has a conflict of interest:

1. Defendants in criminal cases or proceedings (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 or undisciplined, or brought before a court pursuant to a detention order under G.S. 7B-2804(a) and 7B-2805(a);
3. A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for the admission of a minor pursuant to Part 3 of Article 5 of Chapter 122C of the General Statutes;
4. Parents in abuse, neglect, and dependency cases and in termination of parental rights cases, only when there is a related pending criminal charge against the parent;
5. Minors requesting judicial waiver of parental consent to abortion;
6. 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’s office, 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, including workload conflicts, 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 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 by 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, 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 or other reasons of benefit to the client or the efficient administration of justice. 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 Assignments**

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 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. 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 the sequence in which they appear on the list except as permitted by these regulations. The Public Defender may assign 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 assignment 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 that attorney for the next 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 assignments and make the same reasonably available to the public on request. If the Public Defender assigns 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 assigned 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 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.

## **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 assigned 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 private counsel in accordance with the procedures described in this article:

1. Defendants or respondents in cases specified in Article IV, above, only if the court determines that the Public Defender has a conflict;
2. Respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes;
3. Defendants charged with contempt in child support enforcement matters;
4. Parents in cases in which a juvenile is alleged to be abused, neglected, or dependent, except when related criminal charges are pending against the respondent;
5. Respondents in petitions for termination of parental rights, except when related criminal charges are pending against the respondent;
6. Persons responding to show cause orders for contempt of court;
7. Respondents in proceedings for sterilization under Chapter 35, Article 7 (sterilization of persons mentally ill and mentally retarded);
8. 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;
9. Respondents in proceedings for the provision of protective services according to Chapter 108A, Article 6 of the General Statutes
10. Persons found to be material witnesses by the Court;
11. 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 court 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, termination of parental rights, and delinquency 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 with the same defendant 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**

A Committee on Indigent Appointments ( hereinafter “Committee” ) is hereby established to assist the Public Defender in the implementation of these regulations. The Public Defender of Judicial District 16B shall appoint the 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 from performing any of the duties or taking any of the actions authorized by these regulations.

### **B. Committee Membership Qualifications**

Other than the Public Defender or Assistant Public Defenders, members of the committee shall be attorneys who:

- a. Have practiced in one or more areas covered by the appointment lists for not less than 5 years in Judicial District Sixteen B, and
- b. Are knowledgeable about practicing attorneys in Judicial District Sixteen B.

### **C. Committee Membership and Terms**

1. Henceforth the appointees who will serve on the Committee will be designated by category as follows:
  - a. One (1) position designated as Senior Resident Judge position, to be appointed by the Senior Resident Judge;
  - b. One (1) position designated as District Court Judge position, to be appointed by the Chief District Court Judge;
  - c. One (1) position designated as Sixteen B/County Bar position, to be appointed by the President of the Judicial District Sixteen B/County Bar;
  - d. One (1) position designated as Public Defender position, to be appointed by the Public Defender.
  - e. The Public Defender shall serve on the Committee as a permanent member.
  - f. If that person agrees, the Clerk of Superior Court or her designee (who shall be a deputy or assistant clerk) shall serve as an ex officio member of the Committee.

Regardless of the appointing authority, the committee must comprise a majority of lawyers who are not court officials.

The Committee shall select the recording secretary to the Committee.

## **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, in conjunction with the Committee, is responsible for determining the eligibility of attorneys for appointment to cases under these regulations. In discharging this responsibility, the Public Defender and the Committee shall:

- a. Review requests from attorneys concerning placement on the various appointments lists;
- b. Make recommendations regarding placement or removal of attorneys from the various appointment lists;
- c. Make recommendations regarding the number and type of lists and qualifications to be on the lists;
- d. 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.

## **F. Administrator**

There shall be an Administrator of these regulations designated by the Public Defender who shall assist the Committee in performing its duties, including notifying Committee members of meetings, providing them with materials pertinent to their business, and maintaining records relating to the actions of the Committee.

## **VIII. Placement of Attorneys on Lists Within Judicial District**

### **A. Application**

1. Any attorney who wishes to have his or her name added to any list shall file a written request with the 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, including whether specific continuing legal education the attorney has taken is sufficient to meet the requirements. For any list that requires a number of years of required practice as a qualification, the Public Defender may consider relevant law school clinical or other skill-building experience as an alternative. The Public Defender shall act upon each request in a timely manner and assure that the requesting attorney is given prompt written notice of the action taken with respect to his or her request and is advised in writing within 60 days 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.

The discretion as to whether to add an attorney to the list is in the discretion of the Public Defender after consultation with the Committee and the applicable standards of review. The applicable standard of review is 'Employment-at-Will.'

## **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 inform the attorney in writing of the basis for removal within 60 days of the action. The Public Defender retains sole authority for removing attorneys from lists.

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 pursuant to the procedures specified by the IDS policy on *Review from Denial of Attorney Application for Placement on Local Appointment List or Removal from Local Appointment List*, posted on the IDS website. Requests shall be in writing and shall be postmarked within 15 days of when the attorney receives notice of the decision.

Whenever an attorney who provided information to the Committee, collectively or through any member, requests that his or her name not be used or that his or her information be treated confidentially, the request shall be granted to the extent permitted by law unless doing so results in manifest unfairness.

### **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 the State of North Carolina; and
2. Demonstrate that he or she:
  - a. Has a confidential place in which to meet clients and will be available for meetings on a reasonable basis;
  - b. Has available to clients a reliable means of communication, including a telephone number with the capability for callers to leave voice messages and a valid email address; and
  - c. Will be available to the courts for scheduled court appearances.
3. Certify that he or she has read the portion(s) of the Indigent Appointment List Orientation Packet relevant to the list(s), posted on the IDS website.
4. Submit an application to be placed on the particular list and be approved as provided in Article VIII, above.

Except for juvenile delinquency cases, any attorney currently on a list for an area of law covered by a list included in these regulations who is eligible to provide representation as of the effective date of these regulations may remain on that list without certifying that any prerequisite experiential, observation, or training requirements for that list have been met, but the attorney must certify that he or she has read the applicable portion of the Orientation Packet for each list the attorney is on, and the attorney will be required to meet any ongoing requirements as applicable. An attorney currently on a

list encompassing representation for all juvenile delinquency cases may remain on List 4A without meeting the qualification requirements but must certify that he or she has read and is familiar with the Orientation Packet portion relevant to that list as well has completed the Office of the Juvenile Defender orientation requirements, and the attorney must meet ongoing requirements for that list. However, an attorney currently on a list encompassing representation for all juvenile delinquency cases must apply and meet the prerequisite requirements to be on List 4B.

Where a list requires court observation, a session of court is defined as one complete day of court in which cases or matters are heard, with the length of the day depending on the number of cases or matters docketed.

To foster effective communication with counsel, any attorney approved for or on a list shall provide contact and other requested information on the Public Defense Portal posted on the IDS website.

## **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 the Sixteen B Judicial District. The Public Defender or his or her designee shall update the list at least every three months or sooner if there are additions or deletions.

## **C. Lists**

### ***List 1: Misdemeanor Cases and Misdemeanor Probation Violations***

Attorneys on List 1 will represent indigent persons accused of misdemeanors and misdemeanor probation violations in 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 to misdemeanors or misdemeanor probation violations in district court shall continue their representation of the defendant in superior court; however, an attorney on List 1 who is conducting his or her first jury trial in Superior Court must have previously served as second chair on a jury trial or have a second chair, if reasonably available, appointed by the Court to assist with the trial.

*Requirements:* To qualify for List 1, a significant portion of the attorney's practice must be or must be expected to be criminal law; the applicant must certify that he or she has observed at least one (1) district court session and one (1) district court bench trial in the county, and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in misdemeanor cases and will apply that knowledge and skill with appropriate thoroughness and preparation. If the applicant has been licensed to practice law for less than one (1) year, he or she will be required to participate in a mentorship program for one (1) year, if reasonably available and pursuant to rules developed by the Public Defender. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in the area of criminal law within the past year.

### ***List 2: Felonies F through I***

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 who does not have the required jury trial experience described below must have previously served as second chair on a jury trial or have a second chair, if reasonably available, appointed by the Court to assist with the attorney's first trial.

*Requirements:* To qualify for List 2, an applicant attorney must have been licensed to practice law for at least two (2) years and must demonstrate that he or she has the required legal knowledge and skill necessary 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 certify that he or she has tried as lead or co-counsel at least two (2) jury trials to verdict. As an alternative to jury trial experience, the applicant may show completion at least twelve (12) hours of continuing legal education in the area of criminal jury trials.

### ***List 3: Class A – E 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. An attorney on List 3 who has not tried before a jury a case involving a charge covered by this list must have previously served as second chair on a jury trial of such a charge or have a second chair, if reasonably available, appointed by the Court to assist with the attorney's first trial of such a charge.

*Requirements:* To qualify for List 3, an applicant attorney must have been licensed to practice law and have recently practiced adult criminal law on a consistent basis 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 certify that he or she has tried as lead counsel or individually at least three (3) jury trials to verdict. To remain on List 3, the applicant must certify every three (3) years that he or she has attended at least nine (9) hours of continuing legal education relevant to representation of high-level felonies.

### ***List 4A: Juvenile Class A1-3 Misdemeanors, Class H-I Felonies, Probation Violations, and Motions for Contempt***

Attorneys on List 4A will represent juveniles alleged to be delinquent of class A1-3 misdemeanors, class H-I felonies, probation violations, and motions for contempt in the juvenile courts. An attorney on this list may continue to represent a juvenile if the juvenile's case is transferred to Superior Court if the attorney is qualified by the Public Defender to represent adults in that class of felony case in Superior Court, subject to the second-chair requirements for that list. If the attorney is not qualified by

the Public Defender to represent adults in that class of felony case in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

*Requirements:* To qualify for List 4A, the applicant must certify that he or she has read and is familiar with the Juvenile Code and the local rules governing juvenile court in the county or judicial district. The applicant must certify that he or she has shadowed an attorney who is currently on the list for two (2) court sessions; has spent no less than one (1) hour becoming familiar with the practices and procedures of the court counselor office in the county or district and has met with its Chief Court Counselor(s); and has become familiar with the Office of the Juvenile Defender by visiting the website and subscribing to the blog and listserv. Within the first year of practice on the list, the attorney must certify that he or she has conferred with the director of the nearest juvenile detention facility, or the director's designee, in person or by telephone and has become familiar with detention center policies and procedures.

To remain on List 4A, an attorney must complete at least six (6) hours of approved juvenile delinquency training within the first two (2) years of practice on this list, preferably with three (3) hours in the first year, and must thereafter complete at least three (3) hours of approved juvenile delinquency training or such other comparable training as allowed by the Committee every two (2) years. Approved training is that 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, racial and ethnic bias, and cultural issues, provided by 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 Advocates for Justice, the Council for Children's Rights, the National Juvenile Defender Center, the Southern Juvenile Defender Center, or another entity approved by the Office of the Juvenile Defender or the Office of Indigent Defense Services.

#### ***List 4B: Juvenile Felonies A-G***

Attorneys on List 4B will represent juveniles alleged to be delinquent of class A-G felonies in the juvenile courts. An attorney on this list may continue to represent a juvenile if the juvenile's case is transferred to Superior Court if the attorney is qualified by the Public Defender to represent adults in that class of felony case in Superior Court, subject to the second-chair requirements for that list. If the attorney is not qualified by the Public Defender to represent adults in that class of felony case in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

*Requirements:* To qualify for List 4B, the applicant must have recently practiced in juvenile delinquency or adult criminal superior court on a consistent basis for at least three (3) years and must certify that he or she has successfully completed all of the requirements of List 4A. To remain on the list, an attorney must complete at least three (3) hours of approved juvenile delinquency training as defined above in List 4A, or other comparable training, every two (2) years of practice on this list.

#### ***List 5A: Guardianship and Disabled Adults***

Attorneys on List 5A will represent the following persons alleged to be incompetent under Chapter 35A and disabled adults as defined in Chapter 108A of the North Carolina General Statutes.

*Requirements:* To qualify for List 5A, the applicant must certify that he or she has read and is familiar with the law relevant to guardianship and disabled adult proceedings, including North Carolina General Statutes Chapters 35A and Chapter 108; the applicant must have observed at least three (3) guardianship proceedings in the county, including, if possible, one (1) contested guardianship proceeding, one (1) restoration proceeding, and one (1) Chapter 108 proceeding. in the county; and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in guardianship and disabled adult proceedings and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also certify that he or she has attended at least three (3) hours of continuing legal education in relevant law within the past two (2) years, if such training is reasonably available.

***List 5B: Judicial Waiver***

Attorneys on List 5B will represent minors requesting a judicial waiver of parental consent to abortion.

*Requirements:* To qualify for List 5B, the applicant must certify that he or she has read and is familiar with Section 90-21.6 through 21.10 of the North Carolina General Statutes and other relevant law on judicial waiver and must demonstrate that he or she has the required legal knowledge and skill necessary for representation in judicial waiver cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

***List 5C: Civil Commitment***

Attorneys on List 5C will represent respondents in civil commitment matters.

*Requirements:* To qualify for List 5C, the applicant must certify that he or she has read and is familiar with the law relevant to civil commitment, including North Carolina General Statutes Chapter 122C; the applicant must have observed at least three (3) civil commitment hearings in the county, including, if possible, one (1) commitment hearing involving an adult, one (1) voluntary or involuntary commitment hearing involving a minor, and one (1) hearing involving an incompetent adult being admitted by a guardian; and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in cases listed in this category and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in the area of civil commitment law within the past two (2) years, if such training is reasonably available.

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

Attorneys on this list agree to accept child support enforcement actions representing the child support obligor or the person attempted to be held in contempt for whatever purpose. Attorneys on this list shall be appointed by the Court for the session and must be available for immediate hearings or hearings on the same day.

*Requirements:* To qualify for List 8, the applicant must certify that he or she has read and is familiar with Chapters 5, 50, and 110 of the North Carolina General Statutes and other relevant law on child support enforcement; the applicant must have observed at least one (1) child support enforcement court session and one (1) child support contempt hearing in the county; and the applicant must

demonstrate that he or she has the required legal knowledge and skill necessary for representation in child support enforcement cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in the area of child support enforcement law within the past two (2) years, if such training is reasonably available.

***List 7: Parent Counsel, Termination of Parental Rights***

Attorneys on List 7 will represent parents in proceedings involving abuse, neglect, and dependency, and termination of parental rights and will act as Rule 17 Guardians ad Litem for respondent parents in Juvenile Court. 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 whose rights are sought to be terminated has been represented by the appointed attorney in the prior abuse, neglect or dependency proceeding. The court shall forward the summons and petition to the appointed attorney by facsimile.

If related criminal charges are pending against the parent at the time of commencement of the abuse, neglect, and dependency case or the proceeding to terminate parental rights, the court shall appoint the Public Defender to represent the parent. If a private attorney has been appointed and thereafter learns that related criminal charges are pending or have been filed against the parent, the attorney shall notify the Public Defender and, on request of the Public Defender, the attorney shall move to withdraw and the court shall appoint the Public Defender to represent the person in both the criminal case and in the abuse, neglect, and dependency case and termination of parental rights proceeding. Upon being appointed, the Public Defender shall determine whether to assign the case to an attorney in the Public Defender's office or to private counsel on this list.

In any case in which a petition for termination of parental rights is filed, the court should, unless good cause exists not to do so, appoint the same attorney to represent the parent in the termination proceeding who represented the parent in the abuse, neglect, and dependency proceeding.

*Requirements:* To qualify for List 7, the applicant must be familiar with the relevant specialized area of law; the applicant must certify that he or she has read and is familiar with the Section 7B-100 through 7B-1112 of the North Carolina General Statutes and any local rules governing abuse, neglect, and dependency court in the county or judicial district; the applicant must have observed one (1) non-secure custody hearing, one (1) contested adjudication/disposition hearing; one (1) review hearing; one (1) permanency planning hearing; and, if possible, one (1) contested termination of parental rights hearing in the county; and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in the cases in this category and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in the area of parental rights law within the past year, if such training is reasonably available. To remain on the list, the applicant must complete at least three (3) hours of continuing legal education relevant to representation of parents in abuse, neglect, dependency and termination of parental rights every two (2) years of practice on this list.

## **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; 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. 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;
5. Must visit incarcerated clients within three (3) business 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; and
8. Must provide competent representation of the clients;
9. Must adhere to the Rules of Professional Conduct of the North Carolina State Bar.

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

## **XI. Miscellaneous**

Nothing in the Regulations shall be construed or applied inconsistently with the IDS Rules or with other provisions of law. Nothing in these regulations shall preclude the IDS Office from adopting and enforcing standards and rules that supplement or supersede these regulations or from implementing programs, plans, or contracts regarding the assignment of counsel to improve quality, efficiency, and economy.

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 the Regulations only with the approval of the Office of Indigent Defense Services.



## **XII. Adoption and Certification**

These regulations were adopted by the Public Defender Angus Thompson, II, and became effective on January 1, 2002.

The regulations were updated to conform with the IDS Uniform Regulations for Appointment of Counsel mandated by G.S. 7A-498.3(b1) and became effective March 6, 2020.

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.