

**REGULATIONS FOR APPOINTMENT OF COUNSEL IN THE  
21<sup>ST</sup> JUDICIAL DISTRICT  
IN CASES UNDER THE INDIGENT DEFENSE SERVICES ACT**

**I. Applicability**

**A. Generally**

These regulations are issued pursuant to Rule 1.5 of the Rules for the *Continued Delivery of Services in Non-Capital and Non-Criminal Cases at the Trial Level*. They apply to all non-capital criminal and all non-criminal cases in the trial division in the 21st 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. Exclusions**

1. In cases in which the defendant is charged with first-degree murder, an undesignated degree of murder, or an offense filed contemporaneously with or subsequently joined with such murder charges, the court shall appoint the Office of Indigent Defense Services (“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 21<sup>st</sup> 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 21st 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 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.

1. Defendants in criminal cases.
2. Minors requesting judicial waiver of parental consent to abortion.
3. Persons responding to show cause orders for contempt of court (except in child support 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.
5. Persons found to be material witnesses by the court.
6. Respondents in proceedings for sterilization under Chapter 35, Article 7 (sterilization of persons mentally ill and mentally retarded.)
7. Juveniles alleged to be delinquent (Note: Subject to IDS approval, these cases may be assigned by the Public Defender to contracted private counsel.)
8. Respondents in involuntary commitment matters (Note: Subject to IDS approval, these cases may be assigned by the Public Defender to contracted private counsel.)

9. Respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes (Note: Subject to IDS approval, these cases may be assigned by the Public Defender to contracted private counsel.)

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, in a form provided by the Public Defender, on contacting the Public Defender.

### **C. 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, 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 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.

### **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.

3. The Public Defender shall assign attorneys in a strict rotation in the sequence 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 that attorney for the next appointment.

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 by the most appropriate method under the circumstances and shall enter the appointment information in the Case Management System. The Public Defender shall also file the notice of appointment of private counsel with the Clerk of Superior Court and shall furnish to the defendant or respondent instructions about contacting his or her attorney.

### **E. Withdrawal**

Once the Public Defender has issued a notice of appointment of private counsel and filed it with the clerk, 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 new private 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, 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 IX of these regulations. However, if new charges are brought against a former criminal defendant after disposition of unrelated, previous charges, there shall be no presumption that the attorney who represented the defendant on the previous charges should be appointed to represent that defendant on the new charges.

2. If 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, an attorney shall move to withdraw 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 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. Juveniles in cases in which the juvenile is alleged to be delinquent, only if the Public Defender and contracted private counsel have conflicts.
2. Respondents in involuntary commitment matters, only if the Public Defender and contracted private counsel have conflicts.
3. Respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes, only if the Public Defender and contracted private counsel have conflicts;
4. Defendants charged with contempt in child support enforcement matters;
5. Parents in cases in which a juvenile is alleged to be abused, neglected, or dependent, only if the Public Defender and contracted private counsel have conflicts;
6. Respondents in petitions for termination of parental rights, only if the Public Defender and contracted private counsel have conflicts;

7. Persons against whom execution is sought under Chapter 1, Article 28 of the General Statutes and in any civil arrest and bail proceeding under Chapter 1, Article 34 of the General Statutes;
8. Respondents in proceedings for the provision of protective services according to Chapter 108A, Article 6, of the General Statutes;
9. 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. When an appointment is to be made either by the district or superior court, the clerk of court shall provide the name of the next person on the master list to the court, who shall make the assignment as provided below.

2. If the court determines that a person is entitled to counsel, the court shall assign an attorney from the appropriate list. No appointment 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.

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 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. If the court appoints a private attorney for an incarcerated person via audio-video transmission, the court shall provide notice to the person about contacting his or her attorney.

#### **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 be the permanent 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. Membership of Committee and Terms**

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

- a. One position designated as the Senior Resident Judge position, to be appointed by the Senior Resident Judge.
- b. One position designated as the District Court Judge position, to be appointed by the Chief District Court Judge.
- c. Two positions designated as Public Defender positions, both of whom shall primarily practice criminal defense, to be appointed by the Public Defender.
- d. One position held by the Public Defender.

No more than one committee member may be an assistant public defender.

2. The Administrator of the Regulations shall serve as an ex officio member of the Committee and shall also serve as the secretary to the Committee.

3. Members of the Committee shall be appointed for terms of two years and shall not serve more than two consecutive terms. 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 three years in the 21st Judicial District; and
2. are knowledgeable about practicing attorneys in the 21st Judicial District.

### **D. Meetings**

1. Meetings of the Committee shall be called by the chair on reasonable notice. The Committee shall meet at least once a month until the procedures outlined herein are fully implemented and thereafter 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 consultation 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 shall consult with the Committee and shall afford the Committee the opportunity to:

1. Review requests from attorneys concerning placement on the various appointments lists.
2. Participate in determining the placement or removal of attorneys from the various appointment lists.
3. Participate in determining the number and type of lists and qualifications to be on the lists.

4. Recruit additional qualified attorneys to represent individuals entitled to counsel under these rules.
5. Make any other recommendations regarding the operation of the local indigent defense program.

The Public Defender and the Committee 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. Administrative Assistance**

The Administrator of these regulations designated by the Public Defender shall assist the Committee in performing its duties, including as necessary notifying Committee members of meetings, providing them with materials pertinent to their business, and maintaining records relating to the actions of the Committee. The Administrator shall serve as the secretary to 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 Administrator on a form provided by the Administrator. 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 Administrator, and the Administrator shall remove the attorney's name from the list and notify the court and any other interested parties. If an attorney has had his or her name removed from a list, the attorney must reapply to be on that list.

3. An attorney who wishes to transfer from one list to another shall file a written request with the Administrator on a form provided by the Administrator. The Administrator 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 (for example, the attorney wants to transfer from List 3 to List 2 or List 1). 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**

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

## **C. Removal from List**

The Public Defender, in consultation with the Committee, 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 IX, or otherwise fails to meet the responsibilities of representation including, but not limited to, billing in compliance with the Rules of the Commission on Indigent Defense Services, all local rules, and the Revised Rules of Professional Conduct. However, if the Committee finds that one of these conditions exists, but is temporary and remediable, the Committee may temporarily suspend the attorney from the list. With the attorney's consent, the 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 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 shall 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 21st Judicial District or otherwise be able to meet with clients in Forsyth County and demonstrate this ability to meet with clients in Forsyth County to the Committee;
3. Have a working fax or e-mail;
4. 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 the 21st Judicial District. The Public Defender or his or her designee shall update the list at least every 3 months or sooner if the Committee and the Public Defender make additions or deletions.

### **C. Lists**

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

Attorneys on List 1 will represent indigent persons accused of misdemeanors and misdemeanor probation violations in all proceedings before the district court. They will also represent respondents in show cause orders alleging contempt in district court criminal proceedings (but not in child support contempt matters). Attorneys who are appointed misdemeanors in district court shall continue their representation of the defendant on de novo appeal 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: Felonies F through I and Felony Probation Violations***

An attorney on List 2 will represent indigent persons accused of felonies from classes F through I and felony probation violations in 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.

*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: Felonies A to E***

Attorneys on List 3 will represent defendants charged with felonies from class B1 to E and with Class A felonies subject to these Regulations, as described in Article I.B., above. A lawyer on List 3 will also be appointed to represent the client on 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 criminal jury trials to verdict.

***List 4: Misdemeanor Juvenile Cases***

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

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

***List 5: Felony Juvenile Cases—F through I***

Attorneys on List 5 will represent juveniles alleged to be delinquent where the petition alleges class F through I felonies. Attorneys on this list will also be appointed misdemeanor juvenile cases in which the respondent juvenile is accused of committing a misdemeanor..

*Requirements:* To qualify for List 5, the applicant must meet the requirements for List 5 set forth in Appendix A to this document, which is incorporated herein by reference.

***List 6: Felony Juvenile Cases—A through E***

Attorneys on List 6 will represent juveniles alleged to be delinquent where the petition alleges class A through E 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 6, the applicant must meet the requirements for List 6 set forth in Appendix A to this document, which is incorporated herein by reference.

***List 7: Special Proceedings Counsel***

Attorneys on List 7 will represent the following:

- a. persons alleged to be incompetent under Chapter 35A, only if the Public Defender and contracted private counsel have conflicts;
- b. minors requesting a judicial waiver of parental consent to abortion, only if the Public Defender has a conflict;
- c. disabled adults as defined in Chapter 108A of the North Carolina General Statutes;
- d. respondents in involuntary commitment matters, only if the Public Defender and contracted private counsel have conflicts.

Attorneys for matters in b. will be appointed to the Public Defender unless the Public Defender has a conflict, in which case the court shall appoint from List 7.

Attorneys for matters in a. and d. will be appointed to contracted private counsel first; if a conflict exists, the Public Defender will be appointed; should both have a conflict, then the court shall assign the matters in a. and d. to lawyers on List 7.

*Requirements:* To qualify for List 7 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.

***List 8: 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 9: Parent Representation***

Attorneys on this list will represent parents in abuse, neglect, and dependency cases and in proceedings to terminate parental rights. The court shall forward the summons and petition to the appointed attorney by facsimile.

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:* To qualify for this list, attorneys must be familiar with the relevant specialized area of law and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in the cases in this category and will apply that knowledge and skill with appropriate thoroughness and preparation.

**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, in writing, within five (5) days of the attorney's answer to the complaint. Attorneys on the Indigent Appointment List shall inform the Public Defender, in writing, of the results of any North Carolina State Bar disciplinary action.
4. Shall not receive anything of value from anyone in connection with representation under these regulations during the period of representation, except as permitted by IDS Rule 1.9(e).
5. Must visit incarcerated clients within three business days after notification of appointment, absent justifiable excuse (e.g., illness, jury trial, etc.)
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.
  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 contained 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 supercede these regulations or from implementing programs, plans, or contracts regarding the assignment of counsel to improve quality, efficiency, and economy.

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

Notwithstanding any provision above and consistent with the Rules Governing Practical Training of Law Students as approved by the Supreme Court, the Public Defender reserves the right to assign misdemeanor or juvenile delinquency cases to the legal clinic of the School of Law of Wake Forest University.

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 Public Defender George R. Clary, and became effective on April 18, 2003. Section I.B.1. was amended effective December 8, 2004, and effective October 10, 2005. New Section XII. was added effective December 8, 2004. Sections I.B.2. and VIII.C. were amended effective October 24, 2006. Sections IX.C., Lists 4-6 were amended effective March 26, 2007. New Appendix A was added effective March 26, 2007. Section IV.A.4. was amended effective July 8, 2008. Sections VII.A. and VII.B. were amended effective October 2, 2009. Sections III., V.C.3., V.D., V.F.1., VI.A., VI.B.3., VII.B.3., VII.D, VIII.B., VIII.C., VIII.D., IX.A., IX.C. Lists 1, 2, 3, and 4, X., and XI. were amended effective June 15, 2016.

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

**APPENDIX A**  
**QUALIFICATION STANDARDS FOR PRACTICE IN**  
**JUVENILE DELINQUENCY COURT IN THE 21<sup>st</sup> JUDICIAL DISTRICT<sup>1</sup>**  
**(Effective March 26, 2007)**

*The requirements in Section II of this Appendix apply to attorneys who are in good standing but have not recently practiced in juvenile delinquency court or adult criminal court prior to the adoption of these standards. Exemptions from these requirements are set forth in Section III of this Appendix.*

**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 4 (Misdemeanors)**

Prior to approval:

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

Observation: The applicant must observe court sessions in Forsyth County according to the following schedule. If court meets two days a month or less, the applicant must observe one session. If court meets one day a week, the applicant must observe two sessions. If court meets more than one day a week, the applicant must observe three sessions. The applicant must provide to the Public Defender and Forsyth County Committee on Indigent Appointments (hereinafter "Committee") a written statement of the location, date, and time of the session.

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<sup>1</sup> These standards do not apply to law students participating in a law school clinic program under the Rules governing the Board of Law Examiners and the Training of Law Students, Subchapter C, Chapter 1, Title 27 of the North Carolina Administrative Code.

Court counselor office orientation: The applicant must certify to the Public Defender and Committee that the applicant has spent no less than one hour becoming familiar with the practices and procedures of the court counselor office in Forsyth County, preferably by meeting with the Chief Court Counselor or Court Counselor Supervisor.

Continuing Requirements:

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

Detention facility: Within the first year of practice, the applicant must confer with the director of the nearest juvenile detention facility or the director's designee in person or by telephone and become familiar with detention center policies and procedures and certify compliance to the Public Defender and Committee.

**List 5 (Class F-I Felonies)**

Prior to approval:

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

Experience: The applicant must have recently practiced in juvenile delinquency or adult criminal court on a consistent basis for at least one full year.

Continuing requirements:

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

**List 6 (Class A-E Felonies)**

Prior to approval:

Previous requirements: The applicant must have successfully completed all of the requirements of List 5.

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 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.

Continuing requirements:

Training: The attorney must complete at least three hours of juvenile delinquency 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 4** 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 5** 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 6** 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 4** 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 4. 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.

An attorney who wishes to be placed on **List 5** must have recently practiced in adult criminal (district or superior) court on a consistent basis for at least two full years, and have completed the Observation and Court Counselor Office Orientation requirements under List 4. Within one year of 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 6** 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 4. 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.

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.