

# **REGULATIONS FOR APPOINTMENT OF COUNSEL IN DEFENDER DISTRICT 14 (DURHAM COUNTY) IN CASES UNDER THE INDIGENT DEFENSE SERVICES ACT**

## **I. Applicability**

### **A. Generally**

These regulations are issued pursuant to Rule 1.5 of the *Rules for the Continued Delivery of Services in Non-Capital and Non-Criminal Cases at the Trial Level*. They apply to all non-capital criminal and non-criminal cases in the trial division in Defender District 14 in which the provision of counsel is subject to the Indigent Defense Services Act of 2000 (G.S. 7A-498 through 7A-498.8) (hereinafter “IDS Act”).

### **B. Exceptions**

1. In cases in which the defendant is charged with first-degree murder, an undesignated degree of murder, or an offense filed contemporaneously with or subsequently joined with such murder charges, the court shall appoint the IDS Office, which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Capital Cases*. However, the court shall appoint the Public Defender in Defender District 14 in cases in which the defendant or respondent was 17 years of age or younger at the time of the alleged offense and is not eligible for the death penalty; in such cases, the Public Defender shall appoint an attorney from his or her office or a private attorney from the appropriate list.

2. In cases in which a person is entitled to appointed counsel pursuant to G.S. 7A-451 with respect to appeal to the appellate division from an adverse ruling in the trial division, the court shall appoint the Office of the Appellate Defender, which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Non-Capital Criminal Appeals and Non-Criminal Appeals*. The only exception to this procedure is in cases in which a death sentence has been returned, the appellate entries made by the court shall reflect that appeal is taken by operation of law and that the Director of the IDS Office has appointed the Office of Appellate Defender. See Rule 2B.2(a) of *Rules for Providing Legal Representation in Capital Cases*.

## **II. Administration of Regulations**

The Public Defender in Defender District 14 (hereinafter “Public Defender”) is responsible for administering these regulations. The Public Defender shall coordinate with the court and the local bar to ensure that these regulations are applied in a fair and impartial manner. The Public Defender shall designate a member of his or her staff as Administrator of these regulations to keep current the lists of attorneys eligible for appointment and perform such other duties as the Public Defender may determine.

### **III. Determination of Entitlement to Counsel**

In each case subject to these regulations, the court shall determine whether a person is entitled to have counsel appointed to represent him or her in the particular case. In cases in which the person must be indigent to receive counsel, the court shall determine indigency. When these regulations describe the functions that a court performs, the term “court” includes the Clerk of Superior Court.

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

### **IV. Appointment of Public Defender’s Office**

#### **A. Cases Covered**

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

1. Criminal defendants;
2. Juveniles alleged to be delinquent;
3. Parents of juveniles in cases alleging abuse, neglect or dependency;
4. Respondents in petitions for termination of parental rights;
5. Persons alleged to be incompetent;
6. Indigent defendants in civil child support enforcement cases for which the defendant is entitled to counsel;
7. Minors requesting a judicial waiver of parental consent to an abortion;
8. Persons responding to show cause orders for contempt of court;
9. Persons who have been involuntarily committed to local mental health institutions;
10. 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;
11. Persons found to be material witnesses by the Court;
12. Respondents in proceedings for the provision of protective services according to Chapter 108A, Article 6, of the General Statutes;
13. Defendants in hearings for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;
14. Respondents in proceedings for sterilization under Chapter 35, Article 7 (Sterilization of Persons Mentally Ill and Mentally Retarded) of the General Statutes;

15. Persons against whom execution is being 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;
16. Persons seeking a hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;
17. Any other person given the right to court appointed counsel under N.C.G.S. 7A-451(a).

Pursuant to Rule 1.5(b)(2) of the *Rules for the Continued Delivery of Services in Non-Capital Criminal and Non-Criminal Cases at the Trial Level*, the Public Defender shall not be appointed to represent, and shall not assign counsel to represent, a juvenile alleged to be abused, neglected, or dependent.

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

### **B. Notice to Client**

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

### **C. Conflicts**

If after being appointed by the court the Public Defender finds that his or her office is unable to handle a case because of a conflict, 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, particularly for indigent persons incarcerated in the Durham County Jail or the Durham County Youth Home, the Public Defender may pursuant to G.S. 7A-452(a) tentatively assign an attorney from his or her office to represent a person whom the Public Defender determines is entitled to counsel. To help assure the prompt appointment of counsel for in-custody persons, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the Public Defender pursuant to G.S. 7A-453(a). Tentative appointments by the Public Defender under this provision are subject to later approval of the court.

## **V. Assignments by Public Defender**

### **A. Determination**

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

### **C. Order of Appointments**

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

5. Where the Public Defender is appointed as counsel for parents in abuse and neglect cases and is unable to handle the case, the Public Defender shall appoint a private attorney within twenty-four (24) hours of notification by either the Clerk of Court or the County Attorney.

6. In child support enforcement actions, the Public Defender will attempt to assign one attorney to all cases arising in the same session of court. In the event there are more than five (5) defendants assigned counsel in one session of court, the Public Defender will assign five (5) cases to an attorney on a rotating basis. The term “session” for this list is defined to mean the period of time the court is being held during either the morning or afternoon, but not both.

7. In incompetency proceedings, the Public Defender will appoint the same attorney to all proceedings arising in the same calendar week.

8. When the Public Defender is appointing counsel from List 1, the Public Defender will appoint three (3) cases to an attorney before proceeding to the next attorney on the list.

9. The Public Defender may set additional conditions of appointment, including but not limited to requiring attorneys appointed under these Regulations to attend training and/or continuing legal education in the legal area encompassed by the list to which the attorney is assigned.

#### **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.

#### **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 VIII of these regulations. However, if new charges are brought against a former criminal defendant after disposition of unrelated

previous charges, there shall be no presumption that the attorney who represented the defendant on the previous charges should be appointed to represent that defendant on the new charges.

2. If an attorney is appointed to represent a client on one matter, and the attorney learns that the client requires representation on another matter for which the attorney is not on the appropriate list, the attorney shall notify the Public Defender. If requested by the Public Defender, the attorney shall move to withdraw from the case so that the Public Defender may appoint all of the matters to other counsel who is on all of the appropriate lists.

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

### **G. Requests for Substitution of Counsel**

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

## **VI. Committee on Indigent Appointments**

### **A. Establishment of Committee**

There is hereby established the Committee on Indigent Appointments (hereinafter "Committee") to assist the Public Defender with the implementation of these regulations. The Public Defender shall serve as chair of the Committee and shall consult with the Committee as described herein. The failure of the Committee to meet or do any of the things authorized by these regulations, shall not preclude the Public Defender or Court of competent jurisdiction from performing any of the duties or taking any of the actions authorized by these regulations.

### **B. Membership of Committee and Terms**

1. Henceforth the Committee should consist of not fewer than three (3) members of the bar in the Defender District, to be appointed by the Public Defender.

2. Members of the Committee shall be appointed for terms of two (2) years. Any member who resigns or becomes otherwise ineligible to continue serving as a member should be replaced for his or her term as soon as possible.

### **C. Qualifications**

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

1. Have practiced in one or more of the areas covered by the appointment lists for not less than five (5) years in Defender District 14; and

2. Are knowledgeable about practicing attorneys in Defender District 14.

#### **D. Meetings**

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

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

#### **E. Responsibilities**

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

1. Review requests from attorneys concerning placement on the various appointments lists;
2. Make recommendations regarding placement or removal of attorneys from the various appointment lists;
3. Make recommendations regarding the number and type of lists and qualifications to be on the lists;
4. Make any other recommendations regarding the operation of the local indigent defense program.

In consultation with the Committee, the Public Defender shall establish procedures for the carrying out of the Committee's business, including establishing such subcommittees as may be necessary to assist the Committee. Such subcommittees may consist of people who are not members of the Committee.

### **VII. 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 Public Defender. The request shall include information that will facilitate the Public Defender's determination whether the attorney meets the standards set forth in Article VIII for placement on the list. All materials required by Article VIII 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 Public Defender, and the Public Defender, in consultation with 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 Public Defender. The Public Defender may 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 VIII and any other information that will facilitate the Public Defender's determination, in consultation with the Committee, whether the attorney meets the standards set forth in Article VIII 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 VIII, 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.

## **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 VIII 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 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.

### **VIII. 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. Demonstrate that he or she:
  - a. Has a confidential place easily accessible to clients in which to meet clients and will be available for meetings on a reasonable basis;
  - b. Has available to clients a reliable and confidential 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 VII above.

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.

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.

### **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 Public Defender to assist with the trial. In District Criminal Court, the Public Defender will attempt to assign at least three (3) cases to an attorney before moving to the next attorney on List 1.

*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: Class E – I Felonies and Felony Probation Violations***

An attorney on List 2 will represent indigent persons accused of felonies from classes E through I and felony probation violations in the District and Superior Courts. An attorney on List 2 will also be appointed to represent existing clients on new or pending misdemeanor charges, including, if necessary, trial de novo if the client exercises his or her right to a jury trial. An attorney on List 2 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 Public Defender 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 – D Felonies***

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

Attorneys for this list will be appointed by the Public Defender on the basis of a weekly rotation, i.e., one attorney will be appointed all cases of this type that arise in the same calendar week. In the event the number of cases per week exceeds ten (10), the Public Defender will assign the next ten (10) clients to the next attorney on this list.

*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 List 6 agree to accept child support enforcement cases representing the child support obligor or the person attempted to be held in contempt for whatever purpose.

The Public Defender will attempt to assign one (1) attorney to all cases arising in the same session of court. In the event there are more than five (5) respondents assigned counsel in one session of court, the Public Defender will assign five (5) cases to an attorney on a rotating basis. The term “session” for this list is defined to mean the period of time the court is being held during either the morning or afternoon, but not both.

*Requirements:* To qualify for List 6, 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 Representation***

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 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 List 7, 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.

Upon learning that criminal charges are pending or have been filed against the parent, an attorney on List 7 who has not qualified for the appropriate adult criminal list shall immediately notify the Public Defender and, if requested by the Public Defender, shall move to withdraw so that the Public Defender may appoint new counsel qualified to represent the parent in all of the pending matters. When criminal charges are pending against a parent, the Public Defender may appoint an attorney from his office or a private attorney to represent the parent in both the criminal case and the abuse, neglect, and dependency and termination of parental rights cases.

***List 8: Emergency Farmout List***

Attorneys on List 8 agree to accept cases with no more than two hours' notice of assignment. Attorneys on this list must be able to immediately attend to the assigned case in court. Attorneys will be appointed from this list without regard to their sequence position on any other list. Any appointments from this list shall be in addition to appointments from any other list. If the attorney cannot be contacted within a reasonable time, then the Public Defender shall proceed to the next attorney on the Emergency Farmout List.

*Requirements:* To qualify for List 8, the attorney must be available by cellular phone at any time during normal business hours. In addition, attorneys on this list must meet the requirements for List 2 if the case being appointed is a felony, otherwise the attorney must meet the requirements of List 1. Attorneys on this list will be subject to appointment to cases from any of the above lists, where the Court is demanding immediate attention. The attorney also must demonstrate he or she has the required legal knowledge and skill necessary for the representation in misdemeanor, felony, and juvenile cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

***List 9A: Motions for Appropriate Relief (Misdemeanors)***

Attorneys on List 9A will represent indigent persons on motions for appropriate relief that have been filed to correct or vacate judgments in misdemeanors.

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

***List 9B: Motions for Appropriate Relief (Class E – I Felonies)***

Attorneys on List 9B will represent indigent persons on motions for appropriate relief that have been filed to correct or vacate Class E-I felony judgments.

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

***List 9C: Motions for Appropriate Relief (Non-Capital Class A-D Felonies)***

Attorneys on List 9C will represent indigent persons on motions for appropriate relief that have been filed to correct or to vacate non-capital Class A-D felony judgments.

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

**IX. Performance Standards**

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

1. Must maintain regular contact with clients;
2. Must appear on their clients' court dates, absent justifiable excuse (e.g., illness, jury trial, etc.). If scheduling conflicts arise, an attorney should resolve them in accordance with Rule 3.1 of the General Rules of Practice;
3. Must report a North Carolina State Bar Complaint that has been lodged against them to the Public Defender within ten (10) days of the attorney's answer to the complaint. Attorneys on the Indigent Appointment List are expected to inform the Public Defender of the results of any North Carolina State Bar disciplinary action;

4. Shall not receive anything of value from anyone in connection with representation under these regulations during the period of representation, except as permitted by IDS Rule 1.9(e);
5. Must visit incarcerated clients within three (3) 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. If notice of appeal is to the appellate courts, the attorney shall assist the defendant in applying for assistance of appellate counsel;
8. Must provide competent representation of clients; and
9. Must adhere to the Rules of Professional Conduct of the North Carolina State Bar.

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

## **X. Miscellaneous**

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

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

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

## **XI. Adoption and Certification**

These regulations were originally adopted by Public Defender Robert Brown, Jr., and became effective on November 20, 2001.

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 December 16, 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.