

AMENDED REGULATIONS FOR APPOINTMENT OF COUNSEL IN INDIGENT CASES FOR CALDWELL COUNTY, NORTH CAROLINA

Article I Purpose

The purpose of these regulations is to provide for the effective representation of indigent defendants at all stages of trial and appellate criminal proceedings for non-capital cases, for respondents in juvenile proceedings pursuant to Chapter 7A of the North Carolina General Statutes, for juvenile delinquency proceedings and for such other proceedings as applicable, and providing procedures specifically for Caldwell County, North Carolina, one of two counties in Judicial District 25A.

These regulations are also issued pursuant to Rule 1.5 of the *Rules for the Continued Delivery of Services in Non-Capital and Non-Criminal Cases at the Trial Level* (hereinafter “IDS Rules”) for all non-capital criminal and all non-criminal cases in the trial division in the courts of Caldwell County, North Carolina 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”).

Article II Applicability

Section 2.1: Generally

These regulations apply to cases arising in Caldwell County in which: (1) any non-capital cases in which the Court has determined that the defendant is entitled to the appointment of counsel; (2) juvenile proceedings in which the juvenile’s parents are entitled to counsel; (3) termination of parental rights; (3) any juvenile proceeding in which the juvenile is entitled to counsel; (4) proceedings for civil commitment pursuant to Chapter 35, Article 7; (5) incompetency proceedings for pursuant to Chapter 35A, Sub-Chapter I; (6) contempt proceedings regarding enforcement of order, such as child support enforcement; (7) proceedings involving consent for abortion on an unemancipated minor pursuant to Article 1A, part 2 of Chapter 90, and (8) guardianship. Throughout herein, reference to the masculine gender shall be construed to include both male and female persons as well as any transgender or non-binary identifying persons. Reference to the singular shall, as appropriate, be construed to include the plural.

Section 2.2: Exclusions

- (A) 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 (hereinafter “IDS Office”), which shall appoint counsel from the appropriate list in accordance with the *Rules for Providing Legal Representations in Capital Cases*.

However, the court shall appoint counsel from the appropriate list 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.

- (B) In cases in which a person is entitled to appointed counsel pursuant to N.C.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 the Director of the IDS Office has appointed the Office of Appellate Defender. (See Rule 2B.2 of the *Rules for Providing Legal Representation in Capital Cases*).

Article III Administration of Regulations

Section 3.1: Administrator

The President of the Caldwell County Bar shall designate a member of the Committee on Indigent Appointments (see herein below) as the Chairman. Said Chairman shall also act as the Administrator of these regulations. Said Administrator shall file and keep current these regulations for the assignment of counsel with the Clerk of Superior Court for Caldwell County.

Section 3.2: Clerk of Superior Court

The Clerk of Superior Court for Caldwell County shall keep a record of all counsel in the County eligible for appointment under these regulations, as provided below, and a permanent record of all appointments made within the county.

Article IV Determination of Entitlement of 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" shall include the Clerk of Superior Court.

Article V
Appointment of Counsel

Section 5.1: Order of Appointments

- (A) The Clerk of Superior Court shall maintain in his or her office master lists of attorneys for that county. The Committee on Indigent Appointments shall prepare such master lists and the Administrator shall provide them to the Clerk. These master lists shall be made reasonably available to the public upon request by the Clerk. When an appointment is to be made either by the District or Superior Court, the clerk shall provide the name of the next person on the master list to the court, who shall make the assignment as provided below.
- (B) If the court determines that a person is entitled to counsel, the court shall assign an attorney from the appropriate list. No appointment should be made by the court of an attorney whose name does not appear on the one of the master lists on file with the Clerk of Superior Court; however, in the event that no attorney on the appropriate list is available to take an appointment, and no qualified attorney consents to appointment, the judge should consult with the IDS director or her designee and, if IDS fails to arrange for qualified counsel from any district within a reasonable time after such consultation, the judge may appoint any attorney who is otherwise qualified for appointment as provided in Section VII. C., "Lists," of these regulations and is a member of the district bar. Counsel so appointed is entitled to compensation at the IDS-approved rate.
- (C) The court should assign the 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 the inherent authority to appoint an attorney who is not next in sequence on the list if the attorney who is next in sequence is unavailable or has a conflict, another attorney is already representing the particular client or the interests of justice require that a specific attorney be appointed rather than the next available attorney. If the court passes over the name of an attorney for a reason other than the attorney's unavailability, the court should return to the that attorney for the next appointment to the extent administratively feasible.
- (D) The court shall record the appointments it makes. The record shall be made available to the public upon request to the Clerk.
- (E) 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 counsel and shall appoint counsel as provided in N.C.G.S. 7A-452(c).
- (F) An attorney's appointment with respect to a particular charge or proceeding shall

continue until the final disposition of that charge or proceeding, including all critical stages thereof as set forth in N.C.G.S. 7A-451(b), unless the attorney is relieved of his appointment by the court.

Section 5.2: Notice

Upon assigning a case to private counsel, the court or clerk shall furnish the notice of appointment to the attorney, which shall include the charging documents, and shall furnish to the client instructions about contacting his or her attorney. In abuse, neglect or dependency, termination of parental rights, and delinquency proceedings, the clerk shall also forward the summons and petition to the appointed attorney by the most expeditious means possible.

Section 5.3: Multiple Counsel

In assigning cases to private counsel, the court should seek to 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 on the same charge, the attorney appointed in District Court should be appointed to represent that defendant on that charge in Superior Court if he is qualified to do so pursuant to 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 new charges.

If an attorney is appointed to represent a client on one matter, and the attorney learns that the client requires representation on another pending matter within the county 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 pending matters to other counsel who is on all of the appropriate lists. If no single attorney is on all of the appropriate lists, the attorneys appointed to represent the client should consult with each other to assure that the client's mutual interests are protected. If an attorney is already appointed and another matter pending within the county arises for which the attorney is not on the list, the attorney shall discuss the matter with the client and the new counsel and, with the client's permission, notify the court. If multiple attorneys are appointed for the same client, then the attorneys shall consult with each other to assure the client's mutual interests are protected.

Article VI Committee on Indigent Appointments

Section 6.1: Establishment

A Committee on Indigent Appointments (hereinafter the Committee) has been previously established and shall continue to assist in the implementation of these regulations. The Committee shall have the authority to continue to act when these regulations become effective.

Section 6.2: Membership and Terms

- (A) There shall be three members of the Committee, all attorneys, from different law firms in Caldwell County, who regularly appear in the courts of Caldwell County, with practice experience in one or more of the areas covered by the appointments of not less than five years, and knowledgeable about the practicing attorneys in Caldwell County and the 25th Judicial District.
- (B) The President of the Caldwell County Bar shall appoint the three members of the Committee, and shall designate one to be the Chairperson, who will also be the Administrator. Initially, the Chairperson shall serve for a three year term, one other member for a two year term, and the other member for a one year term. Thereafter, each member shall be appointed for a three year term. This shall be done during the January meeting each year of the Caldwell County Bar.
- (C) 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.

Section 6.3: Meetings

The Committee shall meet at the call of the Chairman upon reasonable notice. The first meeting of the Committee shall take place not more than thirty days after certification of these regulations by IDS and/or the North Carolina State Bar. Thereafter, the Committee shall meet as often as is necessary to dispatch its business, but not less than twice per year.

A majority of members 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.

The Committee may invite persons to make appearances if necessary to carry out its duties or to be interviewed. Discussion of the Committee, the record of its meetings and actions shall be treated as confidentially as possible, except as required by law. The names of the members of the Committee shall not be confidential.

Section 6.4: Responsibilities

The Committee is responsible for the determining the eligibility of attorneys for appointment to cases under these regulations. In discharging this responsibility, the Committee shall have the complete authority to accomplish the following:

- (A) Supervise the administration of these regulations;
- (B) Review requests from attorneys concerning placement on any list and obtain information pertaining to such placement;

- (C) Approve or disapprove an attorney's addition or deletion from any list or the transfer of an attorney from one list to another, provided that a request for deletion from any list shall not be denied and does not require Committee approval;
- (D) Establish procedures with which to carry out their business;
- (E) Interview attorneys seeking placement on any list and persons for or against such placement; and
- (F) Maintenance of adequate numbers of attorneys on each list to assure competent representation and fair economic impact on attorneys willing to enter this area of professional responsibility.

Section 6.5: Administrator

The Chairman of the Committee shall serve as the Administrator and shall:

- (A) Notify Committee members of meetings;
- (B) Keep the records of the Committee as appropriate;
- (C) Provide the Committee with materials pertinent to their business;
- (D) Provide the Committee with the names of attorneys who are requesting placement on any list pursuant to these rules and the nature of said request;
- (E) Assure that all requests properly filed are brought to the attention of the Committee as soon as practicable and no later than the next scheduled meeting of the Committee, except for good cause shown;
- (F) Upon request of the Committee, assure that all resident District and/or Superior Court judges for Caldwell County, as well as any other court officials at the Committee's discretion, are advised of a request concerning placement on any list and given an opportunity to comment;
- (G) Keeping current the lists of attorneys;
- (H) Assist the courtroom clerks and the Clerk of Superior Court in carrying out these regulations; and
- (I) Perform other administrative tasks necessary to the implementation of these regulations.

Article VII
Placement of Attorneys on Lists

Section 7.1: Application

Subsequent to the initial preparation of lists, any attorney who wishes to be added to or deleted from any list shall make the request in written letter form to the Chairman of the Committee. The request shall state the action requested, certify to the requisites met, and provide all other information which will facilitate the action of the Committee as to request. The request shall include information that will aid the Committee to determine whether the requesting attorney meets the standards set forth herein for placement on the list required by Article 7.

By submission of a request for placement on any list, an attorney consents to a confidential inquiry by the Committee of any references listed in the request and other familiar with the attorney's competence, for the purpose of determining whether the attorney fulfills the requirements within these rules for placement on the list. Further, the requesting attorney agrees that all information received by the Committee in conjunction with the application, including reference information, shall be confidential and shall not be disclosed except as required by law.

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.

An attorney who wishes to transfer from one list to another shall file a written request with the Administrator. The Administrator should 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 should include information that will facilitate the Committee's determination of whether the attorney meets the standards set forth in Article 7 for placement on the particular list.

Notwithstanding anything herein to the contrary, an attorney who wishes to be added on a limited basis to any list (except List 6: Child Support Enforcement Actions, where only a certain number of attorneys are compensated on a per-session basis) shall make the request in written letter form to the Chairman of the Committee. The written request shall state the action requested, including with particularity the scope and nature of the limitation requested. A requesting attorney may seek to limit the relative frequency of his or her appointment on a list on a systematic and impartial basis. For example, an attorney may request that he or she be appointed to represent an indigent client only every second, third, or fourth time when his or her name comes up in the regular rotation of the sequence in which the attorney appears on the list. By requesting such a limitation in the frequency of his or her appointment, the attorney agrees

and consents that he or she will be deemed to be "unavailable" for appointment and will be skipped over by the court on all other occasions when his or her name comes up in the regular rotation of the sequence of attorney names on the list. The Administrator shall annotate the master list to show when the Committee determines (by and with the consent of the attorney) that the attorney is deemed to be "unavailable" for appointment and therefore should be skipped over by the court. A requesting attorney may not seek to limit his or her availability for appointment to only certain types or categories of cases covered by a particular list. A requesting attorney may not seek to limit his or her availability for appointment to represent particular clients unless ethically required to do so in order to avoid a potential or actual conflict of interest. A written request to be added to any list on a limited basis shall state the reasons for the requested limitation, shall certify to the requisites met, and shall provide all other information which will facilitate the action of the Committee as to the request. The request shall include information that will aid the Committee to determine whether the requesting attorney meets the standards set forth herein for placement on the list required by Article 7.

An attorney who wishes to modify the relative frequency of his or her current availability for appointment on any list shall file a written request with the Administrator. The Administrator should grant the request as the attorney has already met the requirements for inclusion on the list.

Section 7.2: Committee Review

The Committee shall determine whether the requesting attorney meets all of the applicable standards within these rules for placement on any list, including whether specific continuing legal education the attorney has taken is sufficient to meet the requirements. When the Committee meets to review requests for placement on a full or limited basis, it may require that the requesting attorney appear before it to be interviewed and may require information in addition to that submitted in the request. Any member of the committee may discuss requests with other members of the Bar in a confidential manner and may relate information obtained thereby to other members of the Committee. The Rules of Evidence do not apply with respect to review of the requests. The Committee may hold a request in abeyance for a reasonable period of time while obtaining additional information.

Once the Committee has determined whether an attorney requesting to be added to a list or to be transferred from a lower numbered list to a higher numbered list meets all of the applicable standards set out herein, the request shall be granted. If the Committee finds that the requesting attorney does not meet all of the applicable standards, the request shall be denied. If the requesting attorney meets all the applicable standards set out herein, the Committee shall not deny the attorney's request for placement on a limited basis on any list (except List 6: Child Support Enforcement Actions) provided the scope and nature of the requested limitation reduce relative frequency of the attorney's appointment on a list in a systematic and impartial manner. The finding of the Committee shall be reduced to writing and kept in the regular records of the Committee by the Chairman. The Committee shall assure that the requesting attorney is given

prompt notice of the action taken with respect to the request and is advised of the denial if the request is not granted. If the request is denied, the Committee shall specify in writing the applicable standards which the requesting attorney does not meet. If the request is denied in whole or in part due to the limited basis of the request, the Committee shall specify in writing and with particularity the reasons for the denial.

Section 7.3: Removal from List

If at any time it reasonably appears to the Committee that an attorney no longer meets the applicable standards for the list upon which he is placed, no longer meets the performance standards, or that he can no longer sufficiently meet the responsibilities of representing indigent defendants with respect to such a list, the Committee shall direct an attorney to show cause why he should not be removed from the list or transferred from a higher numbered list to a lower numbered list. Appropriate written findings shall be made by the Committee in this regard and the attorney shall be promptly informed of the basis of any action taken and the time for informing the removed attorney shall not be greater than sixty (60) days. The standards shall include billing in compliance with the Rules of the Commission on Indigent Defense Services, all local rules and the Revised Rules of Professional Conduct. If the Committee finds that a condition for removal exists, but is temporary and remediable, the Committee may temporarily suspend the attorney from the list. The Committee retains sole authority for removing attorneys from lists.

Section 7.4: 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 the Director's 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*, as 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.

Section 7.5: Confidentiality

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

Article VIII
Lists of Attorneys

Section 8.1: General Requirements

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

- (A) Be duly licensed to practice law in North Carolina;
- (B) Practice law in the Courts of Caldwell County to an appreciable extent, or intends or desires to do so;
- (C) Must demonstrate an ability to appear and meet with clients within Caldwell County and
 - 1) Demonstrate that he or she has a confidential place in Caldwell County, preferably within the city of Lenoir, in which to meet clients and will be available for meetings on a reasonable basis;
 - 2) Have available to clients a reliable means of communication, including a telephone number with the capability for callers to leave voice messages and a valid e-mail address;
 - 3) Be available to promptly and effectively communicate with those clients who may be in custody of the Caldwell County Detention Center; and
 - 4) Will be available to the courts for scheduled court appearances;
- (D) Submit an application to be placed on the particular list and be approved as provided in Article 6, above.

Except for juvenile delinquency cases, any attorney currently on a list for an area of law covered by a list included in these regulation 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 has read the applicable portion of the Orientation Packet for each list the attorney is on, and the attorney will be required to meet any ongoing requirements as applicable. An attorney currently on a list encompassing representation for all juvenile delinquency cases may remain on that list without meeting the qualification requirements but must certify that he or she has read and is familiar with the Orientation Packet portion relevant to that list for misdemeanors as well has completed the Office of Juvenile Defender orientation requirements, and the attorney must meet ongoing requirements for that list. However, an attorney currently on a list encompassing representation for all juvenile delinquency cases must apply and meet the prerequisite requirements fo the juvenile serious felonies (Class A-G Felonies).

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.

Section 8.2: Provision of Lists

The Administrator shall provide to the court the current lists of attorneys subject to appointment in Caldwell County and should update the list as the Committee makes additions or deletions.

Section 8.3: Lists

(A) List 1A: Misdemeanor Cases and Misdemeanor Probation Violations

Attorneys on List 1 will represent indigent persons accused of misdemeanors (except for cases which include charges of Driving While Impaired) and misdemeanor probation violations in all proceedings before the District Court; They will also represent respondents in show cause orders alleging Contempt Proceedings in District Court (but no in child support contempt matters). Attorneys who are appointed to misdemeanors or misdemeanor probation violations in District Court should continue their representation of the defendants on de novo appeals to Superior Court. However, if an attorney on List 1A who is conducting his first jury trial in Superior court must have previously served as a second chair on a jury trial or have a second chair, if reasonably available, appointed by the Court to assist with the trial.

In addition to the general requirements listed above, to qualify for List 1A, a significant portion of the applicant's practice must be or intended to be criminal law; The applicant must certify that he or she has observed at least one (1) District Court session and (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 representation in misdemeanor cases and will apply that knowledge and skill with appropriate thoroughness and preparation. If the applicant has been licensed for less than one (1) year, applicant shall be required to participate in a mentorship program for one (1) year, if reasonably available and pursuant to rules adopted by the Committee. 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.

(B) List 1B: Driving While Impaired Cases

Attorneys on List 1 will represent indigent persons accused of misdemeanors which include a charge of Driving While Impaired in all proceedings before the District Court;

Attorneys who are appointed pursuant to List 1B, should continue their representation of the defendants on de novo appeals to Superior Court. However, if an attorney on List 1 who is conducting his first jury trial in Superior Court must have previously served as a second chair on a jury trial involving a charge of Driving While Impaired or have a second chair, if reasonably available, appointed by the Court to assist with the trial.

In addition to the general requirements, to qualify for List 1B, an applicant must meet all of the requirements for eligibility for List 1. In addition, the applicant must certify that he or she has observed or participated in at least two (2) District Court bench trials in the county involving a charge of Driving While Impaired; and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in said cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

(C) List 2: Felonies E through I and Felony Probation Violations

Attorneys on List 2 will represent indigent persons accused of felonies from classes E through I and felony probation violations in all proceedings before the District Court and Superior Court. An attorney from List 2 shall 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, regardless of whether the attorney appears on the misdemeanor lists. 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 criminal jury trial or have a second chair, if reasonably available, appointed by the Court to assist with the attorney's first jury trial.

In addition to the general requirements, to qualify for inclusion on List 2, any attorney must have been licensed to practice law in North Carolina for at least two (2) years or admitted to practice by comity for a total of at least two (2) years as a licensed attorney, 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 at least two (2) jury trials to verdict, or in the alternative, show that he or she has completed at least twelve (12) hours of continuing legal education in the are of criminal jury trials.

(D) List 3: Felonies A to D

Attorneys on List 3 will represent indigent persons accused of felonies from class B1 through D. This shall also include Class A felonies subject to the regulations as described in Article I, Section 2.2 above. Felonies from Class A to E are hereinafter referred to as "serious felonies." This representation shall be in all proceedings before the District Court and Superior Court. An attorney from List 3 shall also be appointed to represent existing clients on new or pending misdemeanor charges or non-capital felonies of any class, including, if necessary, trial

de novo if the client exercises his or her right to a jury trial, regardless of whether the attorney appears on the misdemeanor or lower felony lists. An attorney on List 3 who has not tried before a jury a case involving a serious felony charge covered by this list, must have previously served as second chair on a criminal jury trial involving a charge covered by this list or have a second chair, if reasonably available, appointed by the Court to assist with the attorney's first jury trial of such a charge.

In addition to the general requirements, to qualify for inclusion on List 3, any attorney must have been licensed to practice law in North Carolina for at least four (4) years or admitted to practice by comity for a total of at least four (4) years as a licensed attorney. The applicant must have recently practiced criminal law, excluding juvenile delinquency matters, on a consistent basis for at least four (4) years. The applicant 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 also demonstrate that he or she is competent to try a Superior Court case before a jury and otherwise has the ability to handle serious felony cases in Superior Court. The applicant must certify that he or she has tried at least three (3) jury trials to verdict. To remain on List 3, 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.

In an effort to keep fairness and balance among the attorneys on the list, the Clerk shall maintain two lists for the appointment rotation. All attorneys appearing on this List 3 shall appear on both lists used by the clerk for appointment rotation. The clerk shall appoint from the first list all felonies under this List except for charges which include sex crimes such as any degree of rape, sex offense, indecent liberties or other such felonious sexual assault. The clerk shall appoint from the second list when the charges include such sex crimes. The purpose of this section is to distribute such cases evenly and not overburden any one particular attorney with most or all such cases.

(E) List 4A: Juvenile Misdemeanors, Class H through I Felonies, Probation Violations, and Motions for Contempt

Attorneys on List 4A will represent juveniles alleged to be delinquent of Class A1 through Class 3 misdemeanors, Class H through I Felonies, Probation Violations and motions for contempt in Juvenile Court. 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 Committee to represent adults in that class of felony in Superior Court, subject to the second chair requirements for that list. If the attorney is not qualified by the Committee to represent adults in that class of felony case in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

In addition to the general requirements, to qualify for this list an attorney 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 this list, 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 within the first year. Thereafter, said attorney must complete at least three (3) hours of approved juvenile delinquency training or such other comparable training as all owed 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 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.

(F) List 4B: Juvenile Class A through G Felonies

Attorneys on List 4B will represent juveniles alleged to be delinquent of Class A through G Felonies in Juvenile Court. 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 Committee to represent adults in that class of felony in Superior Court, subject to the second chair requirements for that list. If the attorney is not qualified by the Committee to represent adults in that class of felony case in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

In addition to the general requirements, to qualify for this list an attorney have recently practiced in juvenile delinquency or criminal Superior Court on a consistent bases for at least three (3) years and must certify that he or she has successfully completed all of the requirements for List 4A. Thereafter, to remain on this list, the attorney must complete at least three (3) hours of approved juvenile delinquency training as defined above for List 4A, or other comparable training, every two (2) years of practice on this list.

(G) List 5A: Guardianship and Disabled Adults

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

In addition to the general requirements, to qualify for this list an attorney must certify that he or she has read and is familiar with the law relevant to guardianship and disabled adult proceedings, including Chapter 35A and Chapter 108 of the North Carolina General Statutes. The applicant must have observed (or participated in) at least three (3) guardianship proceedings in Caldwell County, including, if possible, one (1) contested guardianship proceeding, one (1) restoration proceeding and one (1) Chapter 108 proceeding. The applicant must demonstrate that he or she has the required legal knowledge and skill necessary for the 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.

(H) List 5B: Judicial Waiver

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

In addition to the general requirements, to qualify for this list an attorney 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.

(I) List 5C: Civil Commitment

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

In addition to the general requirements, to qualify for this list an attorney must certify that he or she has read and is familiar with the law relevant to civil commitment, including Chapter 122C of the North Carolina General Statutes. The applicant must have observed (or participated in) at least three (3) civil commitment proceedings in Caldwell County, including, if possible, one (1) civil commitment proceeding involving an adult; one (1) voluntary or involuntary commitment proceeding involving a minor; and one (1) hearing involving an incompetent adult being admitted by a guardian; The applicant must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in guardianship and disabled adult proceedings and will apply that knowledge and skill with appropriate thoroughness and preparation. The new 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.

(J) List 6: Child Support Enforcement Actions

Attorneys on List 6 will represent persons in child support enforcement actions representing the child support obligor or the person attempted to be held in contempt for whatever purpose.

In addition to the general requirements, to qualify for this list an attorney must certify that he or she has read and is familiar with the law relevant to child support enforcement and contempt, including Chapters 5, 50 and 110 of the North Carolina General Statutes and other relevant law on child support enforcement. The applicant must have observed (or participated in) at least one (1) child support enforcement court session in Caldwell County; one (1) child support contempt hearing in Caldwell County. The applicant must demonstrate that he or she has the required legal knowledge and skill necessary for the 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.

(K) List 7: Parent Representation

Attorneys on List 7 will represent parents in proceedings involving abuse, neglect and dependency; and in 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 respondent parent in the termination proceeding who represented the parent in the abuse, neglect and dependency proceeding.

Given the nature of these cases, which on occasion result in needing several attorneys for multiple parent or multiple conflicts, the court shall also maintain a Standby List for such cases for those instances where the list has been exhausted and other counsel is needed. The requirements for being added to this list shall be the same as any other attorney requesting addition to List 7.

In addition to the general requirements, to qualify for this list an attorney 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 law relevant to these matters, including Chapter 7B-100 through 7B-1112 of the North Carolina General Statutes and any local rules governing abuse, neglect and dependency court in Caldwell County. The applicant must have observed (or participated in) at last one (1) non-secure custody hearing, one (1) contested adjudication/disposition hearing; one (1) review

hearing; one (1) permanency planning hearing; and, if possible, on (1) contested termination of parental rights hearing in Caldwell County; and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in guardianship and disabled adult proceedings and will apply that knowledge and skill with appropriate thoroughness and preparation. The new 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. To remain on List 7, the applicant must complete at least three (3) hours of continuing legal education relevant to the representation of parents in abuse, neglect, dependency and termination of parental rights every two (2) years of practice on this list.

Article 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:

- (A) Must maintain regular contact with clients and keep them fully informed as to the status of their cases;
- (B) Must appear on their clients' court dates, absent justifiable excuse (e.g. illness, jury trial, court conflict, etc.). If scheduling conflicts arise, an attorney should resolve them in accordance with Rule 3.1 of the General Rules of Practice;
- (C) Must report a North Carolina State Bar complaint that has been lodged against them to the Administrator, in writing, within (5) days of the attorney's answer to the complaint and inform the Administrator in writing of the results of any North Carolina Bar disciplinary action;
- (D) 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);
- (E) Must visit incarcerated clients within three (3) business days after notification of appointment, absent justifiable excuse. This visit may take place via video conference. If necessary, counsel may arrange for a designee to conduct the initial interview;
- (F) 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, 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 apply for assistance of appellate counsel;

- (G) Must provide competent representation of clients;
- (H) Must adhere to the Rules of Professional Conduct of the North Carolina State Bar.

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

Article X 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 IDS Office from adopting and enforcing standards and rules that supplement or supersede these regulations or from implementing programs, plans, or contracts regarding the assignment of counsel to improve quality, efficiency, and economy.

These regulations may be amended by a majority vote of the Caldwell County Bar at any regular meeting, subject to approval for modification by the IDS Commission and certification by the IDS Director.

It is recognized that the Court has the inherent discretionary power in any case to decline to appoint a particular attorney to represent an indigent person. It is also recognized that occasionally the Court may determine that the interests of justice would be best served by appointing a particular lawyer to handle a particular case even though he may not be next in the alphabetical sequence or does not maintain an office in Caldwell County.

On those occasions when an appointed attorney is not available on the client's court date, with the approval of the court, another attorney within the appointed attorney's law firm, who is qualified and on the list for the charges the client is facing, may represent the indigent client in matters other than jury trial, with the advance express consent and instruction of the client.

These regulations shall be construed liberally in order to carry out their stated purpose.

These regulations shall become effective immediately.

The Judicial District Bar may request modification to these regulations at any time in writing by directing the request to the IDS Director.

Article XI
Adoption and Certification

| | |
|-------------------|--|
| Policy Number: | 05.01.02 |
| Custodian: | Defender Policy and Planning Attorney |
| Effective Date: | 2023.05.12 |
| Next Review Date: | 2028.05.01, unless reviewed earlier |
| Location: | Public Defense in Your County - Indigent Defense Services (ncids.org) |
| Revision History | Regulations certified by the President of the Caldwell County Bar on August 4, 2021, and approved as modified and certified by the IDS Director on December 8, 2021; amended regulations adopted by the Commission on Indigent Defense Services on January 28, 2023 and certified by IDS director on May 12, 2023. |