

24 R 146

REGULATIONS FOR APPOINTMENT OF COUNSEL IN  
DEFENDER DISTRICT 15 (COLUMBUS COUNTY) IN CASES  
UNDER THE INDIGENT DEFENSE SERVICES ACT

FILED  
JULY 2 2011  
23

**I. Applicability**

**A. Generally**

These regulations are issued pursuant to Rule 1.5 of the *Rules for the Continued Delivery of Services in Non-Capital and Non-Criminal Cases at the Trial Level* (hereinafter “IDS Rules”). They apply to all non-capital criminal and non-criminal cases in the trial division in Columbus County, Defender District 15, 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 Office of the Capital Defender, which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Capital Cases*. 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, the court shall notify the Office of the Juvenile Defender to appoint counsel. The Office of the Juvenile Defender shall consult with the Public Defender in District 15 and determine whether the Public Defender will retain the case. If the Public Defender does not retain the case or is unable to appoint counsel within 48 hours, the Office of the Juvenile Defender shall appoint counsel.
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 15 (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. All defendants in criminal cases.
2. All juveniles alleged to be delinquent or in contempt of an undisciplined order.
3. Criminal and juvenile defendants in noncapital motions for appropriate relief in which the court has found that sufficient grounds exist so as to entitle the defendant or juvenile to a hearing or to assistance of counsel.
4. Persons found to be material witnesses by the court.
5. Persons responding to show cause orders for contempt of court (except in child support matters, alimony matters, or matters pertaining to the failure of a person to abide by a family court order, in which case the court may appoint either the Public Defender or an attorney from the appropriate private attorney list).
6. To the extent reasonably appropriate, parents entitled to an attorney in abuse, neglect, dependency matters and termination of parental rights proceedings.

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.

In all other matters the court shall appoint counsel from the appropriate list of private counsel as provided in Article VI, below. The lists shall be maintained and provided to the court by the Public Defender. In the event that there is no appropriate attorney on any list to handle a particular matter in which a defendant is entitled to counsel, then the court shall appoint the Public Defender.

#### **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 the manner in which the client should contact the Public Defender.

#### **C. Conflicts**

If after being appointed by the court the Public Defender finds that his or her office is unable to handle a case because of a conflict, including workload conflicts, the Public Defender shall assign the case to private counsel in accordance with the regular rotation in these Regulations and any criteria approved by IDS. If the Public Defender has appeared in the case before discovering a conflict, the Public Defender shall also file a motion to withdraw with the court.

#### **D. Preliminary Determination**

Prior to the court's determination of entitlement to counsel in any of the matters listed above, the Public Defender may, pursuant to G.S. 7A-452(a), tentatively assign 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 and the Court shall assign the case to private counsel as provided in Article VI below.

## **C. Order of Appointments**

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

## **D. Notice**

If the Public Defender assigns an assistant public defender to a case, the Public Defender shall enter that information in the Case Management System. If the Public Defender assigns a

case to private counsel, the Public Defender shall furnish a notice of appointment to the attorney by email or other appropriate notification means, within one business day of the appointment by the Public Defender. The Public Defender shall also file the notice of appointment of private counsel with the Clerk of Superior Court and shall provide a copy to the defendant or respondent along with instructions about contacting his or her attorney.

#### **E. Withdrawal**

Once the Public Defender has issued a notice of appointment of private counsel, only the court may permit the attorney to withdraw. If the court permits the attorney to withdraw, the Public Defender shall assign the case to an assistant public defender or to a new private attorney. If the Public Defender has a conflict in Superior Court, the court shall assign to new private counsel as provided in Article VI, below; however, if private counsel has conferred with the Public Defender and advises the court that there is no conflict, the court shall appoint the Public Defender.

#### **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 IX of these regulations.
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 the appropriate lists, the attorneys appointed to represent the client shall consult with each other to ensure that the client's interests are protected. With the consent of the Public Defender and the attorney to be appointed, one or more of the attorneys appointed to represent the client may be added to a list, in accordance with Article V.C.2., above, to accommodate appropriate and consolidated representation of the client.
4. 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.

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

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

## **VI. Appointment of Private Counsel by Court**

### **A. Cases Covered**

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

1. Respondents in involuntary commitment matters; however, the court may appoint the Public Defender in circumstances where the court finds it would be more appropriate for the Public Defender to represent the respondent.
2. Respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes.
3. Persons charged with contempt in child support enforcement matters, alimony matters, or any other matter pertaining to an alleged violation of a family court order, however, the court may appoint the Public Defender in circumstances where the court finds that it would be more appropriate for the Public Defender to represent a person charged with contempt.
4. Persons against whom execution is sought under Chapter 1, Article 28 of the General Statutes and in any civil arrest and bail proceeding under Chapter 1, Article 34 of the General Statutes.
5. Respondents in proceedings for the provision of protective services according to Chapter 108A, Article 6, of the General Statutes.
6. Defendants or respondents in cases specified in Article IV, above, only if the court determines that the Public Defender has a conflict.
7. Any other person who has a right to appointed counsel that is not otherwise described in this article or in Article IV, above.

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

### **B. Order of Appointments**

1. The Clerk of Superior Court shall maintain in his or her office master lists of attorneys, duly qualified under Articles VIII and IX, to handle cases appointed by the

court. The Public Defender, in consultation with the Committee on Indigent Appointments, shall prepare and provide to the clerk such master lists, which shall be made reasonably available to the public upon request. The Clerk of Court shall distribute copies of such master lists to each courtroom and the court shall assign attorneys from such lists as provided below.

2. If the court determines that a person is entitled to counsel, the court shall assign an attorney from the appropriate list. No appointment shall be made by the court of an attorney whose name does not appear on one of the master lists on file with the Clerk of Superior Court. In exceptional circumstances, the court may appoint an attorney who is not on the list with that attorney's consent.
3. The court shall assign attorneys in a strict rotation in the sequence in which they appear on the list except as permitted by these regulations. However, the court has inherent authority to appoint an attorney who is not next in sequence on the list if an attorney is unavailable, an attorney has a conflict, another attorney is already representing the particular client, or the interests of justice require that a specific attorney be appointed rather than the next available attorney. If the court passes over the name of an attorney for a reason other than the attorney's unavailability, the court shall return to that attorney for the next appointment to the extent administratively feasible.
4. The court shall record on a form provided by the Public Defender the appointments it makes and shall provide the record to the Public Defender on a monthly basis. If the court appoints an attorney who is not next in sequence, the court shall record the reasons for doing so. This record shall be made available to the public upon request to the Public Defender.

### **C. Notice**

Upon assigning a case to private counsel, the court shall furnish the notice of appointment to the attorney and shall furnish to the client on a form provided by the Public Defender instructions about contacting his or her attorney. If the court appoints a private attorney for an incarcerated person via audio-video transmission, the court shall provide notice to the person about contacting his or her attorney. In abuse, neglect, or dependency, termination of parental rights, and delinquency proceedings, the court or clerk shall also forward the summons and petition to the appointed attorney by the most expeditious means possible.

### **D. Multiple Counsel**

1. In assigning cases to private counsel, the court shall seek to appoint the same attorney on all pending matters concerning the defendant or respondent if the attorney is on the appropriate list.
2. If an attorney is appointed to represent a client on one matter and the attorney learns that the client requires representation on another matter for which the attorney is not

on the appropriate list, the attorney shall notify the court. The court may remove the attorney from the case so that the court may assign all of the matters to other counsel who is on all of the appropriate lists.

3. If no single attorney is on all of the appropriate lists, the attorneys appointed to represent the client shall consult with each other to assure that the client's interests are protected.
4. If new charges are brought against a former criminal defendant after disposition of unrelated, previous charges, to the extent possible, the court may re-appoint the same counsel to a particular indigent client when it appears that the prior representation of the client will be beneficial to the current representation of the client as a result of the prior relationship developed between counsel and the client and when the former counsel has gained knowledge that will aid in the effective representation of the client.

## **VII. Committee on Indigent Appointments**

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

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

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

1. Henceforth the appointees who will serve on the Committee will be designated by category as follows:
  - a. One (1) position designated as Senior Resident Judge position, to be appointed by the Senior Resident Judge.
  - b. One (1) position designated as District Court Judge position, to be appointed by the Chief District Court Judge.
  - c. One (1) position designated as Clerk of Superior Court position, to be appointed by the Clerk of Superior Court.
  - d. Three (3) positions designated as Public Defender position, to be appointed by the Public Defender.



- e. One (1) position held by the Public Defender.

Regardless of the appointing authority, the committee must comprise a majority of lawyers who are not court officials. If any one of the present members declines to serve, the appropriate person (e.g., Judge or Clerk) shall fill the vacancy. After the initial Committee is formed, any vacancy occurring will likewise be filled by appointment by the appropriate person.

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 15; and
2. Are knowledgeable about practicing attorneys in Defender District 15.

Notwithstanding the above, the Clerk of Superior Court may appoint an assistant clerk to the Committee.

### **D. Meetings**

1. Meetings of the Committee shall be called by the chair on reasonable notice. The chair shall call a meeting of the Committee at least once every three months until the procedures outlined herein are fully implemented and thereafter shall call a meeting as often as necessary to dispatch the Committee's business, but not less than quarterly.
2. A majority of the Committee must be present at any meeting in order to constitute a quorum. The Committee may take no action unless a quorum is present. A majority vote of the members present in favor of a motion or any proposed action shall be required in order for the motion to pass or the action to be taken.

### **E. Responsibilities**

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

1. Review requests from attorneys concerning placement on the various appointment 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.

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

#### **F. Administrative Assistance**

The Administrator of these regulations designated by the Public Defender shall assist the Committee in performing its duties, including as necessary notifying Committee members of meetings, providing them with materials pertinent to their business, and maintaining records relating to the actions of the Committee. The Administrator shall serve as the secretary to the Committee.

### **VIII. Placement of Attorneys on Lists**

#### **A. Application**

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

Committee's determination whether the attorney meets the standards set forth in Article IX for placement on the particular list.

### **B. Addition to List**

The Public Defender shall determine whether the attorney meets all of the applicable standards in Article IX, including whether specific continuing legal education the attorney has taken is sufficient to meet the requirements. For any list that requires a number of years of required practice as a qualification, the Public Defender may consider relevant law school clinical or other skill-building experience as an alternative. The Public Defender shall act upon each request in a timely manner and assure that the requesting attorney is given prompt written notice of the action taken with respect to his or her request and is advised in writing within 60 days of the basis for denial if the request is not granted.

The Public Defender shall review each request by an attorney to be added to a list and 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 Public Defender, or his or her designee, to be interviewed. The Public Defender may discuss requests with other members of the bar and the bench. 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**

The Public Defender, in consultation with the Committee, may remove or suspend an attorney from a list if at any time an attorney no longer meets the standards set forth in Article IX for the list on which he or she is placed, does not meet the performance standards in Article X, 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.

## **IX. Lists of Attorneys**

### **A. General Requirements**

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

1. Be licensed to practice in North Carolina.
2. Maintain a box at the Columbus County Courthouse where notices to the attorney are placed and retrieve such notices on a daily basis.
3. Demonstrate that he or she:
  - a. Has a confidential place in which to meet clients and will be available for meetings on a reasonable basis;
  - b. Has available to clients a reliable means of communication, including a telephone number with the capability for callers to leave voice messages and a valid email address; and
  - c. Will be available to the courts for scheduled court appearances.
4. 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.
5. Submit an application to be placed on the particular list and be approved set forth herein.

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

applicable. An attorney currently on a list encompassing representation for all juvenile delinquency cases may remain on Lists 6A and 6B without meeting the qualification requirements but must certify that he or she has read and is familiar with the Orientation Packet portion relevant to that list as well has completed the Office of the Juvenile Defender orientation requirements, and the attorney must meet ongoing requirements for that list. However, an attorney currently on a list encompassing representation for all juvenile delinquency cases must apply and meet the prerequisite requirements to be on List 6C.

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

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

### **B. Provision of Lists**

The Public Defender or his or her designee shall provide to the court the current list of attorneys subject to appointment in Columbus County. The Public Defender or his or her designee shall update the list at least every three (3) months or sooner if the Public Defender makes additions or deletions.

### **C. Lists**

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

Attorneys on List 1 will represent indigent persons accused of misdemeanors and misdemeanor probation violations in the District and Superior Courts. They will also represent respondents in show cause orders alleging contempt in district court criminal proceedings (but not in child support contempt matters). Attorneys who are appointed to misdemeanors or misdemeanor probation violations in district court shall continue their representation of the defendant in superior court; however, an attorney on List 1 who is conducting his or her first jury trial in Superior Court must have previously served as second chair on a jury trial or have a second chair, if reasonably available, appointed by the Court to assist with the trial.

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

has attended at least three (3) hours of continuing legal education in the area of criminal law within the past year.

***List 2: Felonies H - I***

Attorneys on List 2 will represent indigent persons accused of felonies from classes H through I in the District and Superior courts. An attorney on List 2 will also be appointed to represent existing indigent clients on new or pending misdemeanor charges, including, if necessary, trial de novo if the client exercises his or her right to a jury trial.

*Requirements:* To qualify for List 2, an applicant attorney must have been licensed to practice law for at least two (2) years and must demonstrate that he or she has the required legal knowledge and skill necessary to represent defendants 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 requirement that an applicant have been licensed for at least two (2) years may be waived upon the participation by the applicant in at least two (2) jury trials, from jury selection through deliberation, as either first or second chair.

***List 3: Felonies E - G***

Attorneys on List 3 will represent indigent persons accused of felonies from classes E through G in the District and Superior Courts. An attorney on List 3 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, and new or pending class H or I felonies. An attorney on List 3 who does not have the required jury trial experience described below must have previously served as second chair on a jury trial or have a second chair, if reasonably available, appointed by the Court to assist with the attorney's first trial.

*Requirements:* To qualify for List 3, an applicant attorney must have been licensed to practice law for at least three (3) years and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in 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. The requirement that an applicant have been licensed for at least three (3) years may be waived upon the participation by the applicant in at least three (3) jury trials, from jury selection through deliberation, as either first or second chair.

#### ***List 4: Felonies A - D***

Attorneys on List 4 will represent indigent persons charged with felonies from class B1 through D, and with Class A felonies subject to these Regulations, as described in Article I.B. above, in the District and Superior Courts. A lawyer on List 4 will also be appointed to represent the indigent client on new or pending misdemeanors or non-capital felony charges if any. 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 4 who has not tried before a jury a case involving a charge covered by this list must have previously served as second chair on a jury trial of such a charge or have a second chair, if reasonably available, appointed by the Court to assist with the attorney's first trial of such a charge.

*Requirements:* To qualify for List 4, 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 4, 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. Only attorneys who are on the Capital Roster as either lead or associate counsel, or who have otherwise demonstrated eligibility by meeting the general litigation, jury trial, and capital or murder trial experience requirements for lead counsel listed in the Application for the Capital Rosters, may be assigned to represent defendants charged with first-degree murder.

#### ***List 5: Felony Probation Violations***

An attorney on List 5 will represent defendants charged with violating any terms of their felony probation.

*Requirements:* To qualify for List 5, an applicant attorney must meet the requirements of List 2.

#### ***List 6A: Juvenile Cases - Misdemeanors***

Attorneys on List 6A will represent juveniles alleged to be delinquent in the juvenile courts where the petition alleges a misdemeanor offense. They will also represent juveniles in review hearings and show cause hearings alleging contempt or violation of the terms of any prior order. An attorney on this list may continue to represent a juvenile if the juvenile's case is transferred to Superior Court if the attorney is qualified by the Public Defender to represent adults in that class of felony case in Superior Court, subject to the second-chair requirements for that list. If the attorney is not qualified by the Public Defender to represent adults in that class of felony case in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified

attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

*Requirements:* To qualify for List 6A, a significant portion of the attorney's practice must be or must be expected to be juvenile and criminal law and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in misdemeanor juvenile cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must further certify that he or she is familiar with the Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level (adopted December 14, 2007), the practices and procedures of the juvenile court, the policies and procedures of the court counselor office in Columbus County, the Columbus County detention center policies and procedures, the Juvenile Code, and other relevant law, 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 6A, 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 16 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 6B: Felony Juvenile Cases—E - I***

Attorneys on List 6B will represent juveniles alleged to be delinquent where the petition alleges class E through I felonies. Attorneys on this list will also be appointed to any new or pending misdemeanor juvenile cases as defined for List 6A. An attorney on this list may continue to represent a juvenile if the juvenile's case is transferred to Superior Court if the attorney is qualified by the Public Defender to represent adults in that class of felony case in Superior Court, subject to the second-chair requirements for that list. If the attorney is not qualified by the Public Defender to represent adults in that class of felony case in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.



*Requirements:* To qualify for List 6B, an applicant attorney must have recently practiced in juvenile delinquency or adult criminal superior court on a consistent basis for at least two (2) years and must certify that he or she has successfully completed all of the requirements of List 2 and List 6A.

***List 6C: Felony Juvenile Cases—A - D***

Attorneys on List 6C will represent juveniles alleged to be delinquent where the petition alleges class A through D felonies. Attorneys on this list will also be appointed to represent the juvenile on any new or pending misdemeanors or felonies of any class, and on any new or pending juvenile matter as defined in List 6B and List 6A. An attorney on this list may continue to represent a juvenile if the juvenile's case is transferred to Superior Court if the attorney is qualified by the Public Defender to represent adults in that class of felony case in Superior Court, subject to the second-chair requirements for that list. If the attorney is not qualified by the Public Defender to represent adults in that class of felony case in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

*Requirements:* To qualify for List 6C, an applicant attorney 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 4 and List 6B. Only attorneys who are on the Capital Roster as either lead or associate counsel, or 17 who have otherwise demonstrated eligibility by meeting the general litigation, jury trial, and capital or murder trial experience requirements for lead counsel listed in the Application for the Capital Rosters, may be assigned to represent juveniles charged with first-degree murder.

***List 7A: Guardianship and Disabled Adults***

Attorneys on List 7A will represent the following persons alleged to be incompetent under Chapter 35A and disabled adults as defined in Chapter 108A of the North Carolina General Statutes.

*Requirements:* To qualify for List 7A, 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 proceedings 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 7B: Judicial Waiver***

Attorneys on List 7B will represent minors requesting a judicial waiver of parental consent to abortion.

*Requirements:* To qualify for List 7B, 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 7C: Civil Commitment***

Attorneys on List 7C will represent respondents in civil commitment matters.

*Requirements:* To qualify for List 7C, 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 8: Child Support Enforcement Actions*** (including contempt in alimony proceedings or violation of any family law order)

Attorneys on List 8 agree to accept child support enforcement cases representing the child support obligor or the person attempted to be held in contempt for whatever purpose and any person alleged to have violated the term of any alimony order or other alleged violation of any family law order. Attorneys for all List 8 matters shall be appointed by the court or by the Superior Court Clerk in accordance with Articles IV and VI, above, and the Public Defender shall not be appointed unless there is a conflict and there is no appropriate attorney on the list to accept the matter, except to the extent that the Public Defender places an attorney from his or her office on the list.

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

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

***List 9: Parent Representation***

Attorneys on List 9 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.

Attorneys for all List 9 matters shall be appointed by the court or by the Superior Court Clerk in accordance with Articles IV and VI, above. The Public Defender shall be appointed to the extent reasonably possible and to the extent that the Public Defender places attorneys from his or her office on the list.

***Requirements:*** To qualify for List 9, 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 19 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 four (4) 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 9, each attorney on this list must complete at least one CLE relating to abuse, neglect, and dependency courts per calendar year, for a minimum of four (4) hours per year. The deadline will be December 31st of every calendar year. Each attorney is responsible for providing to the Public Defender a copy of the CLE registration form. The CLE requirement may be waived for any attorney with at least ten (10) consecutive years of experience in representing parents in Columbus County in abuse, neglect, and dependency and/or termination of parental rights matters if the period of experience immediately precedes the year for which the waiver is being sought.

## **X. Performance Standards**

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

1. Must maintain regular contact with clients;
2. Must appear on their clients' court dates, absent justifiable excuse (e.g., illness, jury trial, etc.). If scheduling conflicts arise, an attorney should resolve them in accordance with Rule 3.1 of the General Rules of Practice;
3. Must report a North Carolina State Bar Complaint that has been lodged against them to the Public Defender within ten (10) days of the attorney's answer to the complaint. Attorneys on the Indigent Appointment List are expected to inform the Public Defender of the results of any North Carolina State Bar disciplinary action;
4. Shall not receive anything of value from anyone in connection with representation under these regulations during the period of representation, except as permitted by IDS Rule 1.9(e);
5. Must visit incarcerated clients within three (3) 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.

## **XI. Miscellaneous**

Nothing in these regulations shall be construed or applied inconsistently with the IDS Rules or with other provisions of law. Nothing in these regulations shall preclude the Office of Indigent Defense Services from adopting and enforcing standards and rules that supplement or supersede these regulations or from implementing programs, plans, or contracts regarding the assignment of counsel to improve quality, efficiency, and economy. The Public Defender shall provide to the Office of Indigent Defense Services such reports and records as may from time to time be required by the Office. The Public Defender may modify this plan with the approval of the Office of Indigent Defense Services.

## **XII. Adoption and Certification**

These regulations are adopted by Public Defender Jacob D. Ward and become effective on April 25, 2024. The regulations 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.