

State of Michigan Washtenaw County Trial Court	<u>CONTRACT ATTORNEY AND FELONY</u> <u>INDIGENT DEFENSE ATTORNEY</u> <u>APPOINTMENT PROCEDURE</u>	Local Administrative Order C22 2015-05J/P81 2015-04J
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Effective Date: November 1<sup>st</sup>, 2015

The purpose of this order is to establish a new procedure for the appointment of contract attorneys to represent indigent minors or parents in Family Division Juvenile proceedings and indigent defendants in Felony cases.

**This LAO rescinds LAO C22 2010-15J/ P81-2010-04J**

**1. Priority of Appointment**

- a. First Level Appointment. The Washtenaw County Public Defender's office will be assigned to represent minor children as Guardian Ad Litem (GAL) in all Child Abuse and Neglect cases and to represent the juvenile in all Delinquency cases absent any conflicts. The Public Defender's office will also be assigned to represent all indigent adult defendants in felony cases absent any conflicts.
- b. Second Level Appointment. These assignments are made when there is a conflict with the Public Defender's Office in the First Level Appointment. The Trial Court shall maintain two separate and distinct contract attorney groups that will be assigned to represent juveniles and adults in case types as described above in paragraph a.
  - 1) Child Abuse and Neglect Cases. Those attorneys awarded the Indigent Legal Representation for Juvenile Cases contract (Juvenile Contractor) shall be assigned to represent the first named parent respondent in Child Abuse and Neglect cases, absent any conflicts. Should the Public Defender's office have a conflict with representing any or all of the minors as GAL in a Child Abuse and Neglect case, the Juvenile Contractor shall be assigned to represent the minor as the GAL, and the Public Defender's Office will represent a parent, absent a conflict. If the Juvenile Contractor has a conflict with representing the first named parent in a Child Abuse and Neglect case, the Juvenile Contractor will represent any other parent, absent any conflict.
  - 2) Juvenile Delinquency Cases. The Juvenile Contractor shall be assigned to represent the juvenile defendant, or a co-defendant, absent any conflict.
  - 3) Adult Felony Cases. Those attorneys awarded the Indigent Legal Representation for Felony Cases (Felony Contractor) shall be assigned to represent the adult defendant, or a co-defendant, absent any conflict.

c. Third Level Appointment.

- 1) Child Abuse and Neglect Cases. The Felony Contractor shall be assigned to represent any other parent who is not already represented by either the Public Defender's office or the Juvenile Contractor, absent any conflict.
- 2) Juvenile Delinquency Cases. The Felony Contractor shall be assigned to represent the juvenile defendant who is not already represented by either the Public Defender's office or the Juvenile Contractor, or a codefendant, absent any conflict.
- 3) Adult Felony Cases. The Juvenile Contractor shall be assigned to represent the adult defendant, or codefendant, who is not already represented by either the Public Defender's office or the Felony Contractor, absent any conflict.

d. Fourth Level Appointment.

- 1) Child Abuse and Neglect Cases. If after exhausting the assignment processes for levels one through three additional counsel is required, counsel will be assigned from the Juvenile Appointment List.
- 2) Juvenile Delinquency Cases. If after exhausting the assignment processes for levels one through three additional counsel is required, counsel will be assigned from the Juvenile Appointment List.
- 3) Adult Felony Cases. If after exhausting the assignment processes for levels one through three additional counsel is required, counsel will be assigned from the Felony Appointment List.

## **2 Qualifications and Training for appointment to the Felony Appointment List**

- a. To be eligible for appointment by the Court from the Felony Appointment List, all attorneys must be licensed to practice law in Michigan and be a member in good standing of the Bar of Michigan. Eligible attorneys requesting to be placed on the appointment list must submit a letter to the Court Administrator attesting to such standing and include a resume of educational and professional experience.
- b. Applications will be reviewed by the Court's Oversight Committee which shall consist of one circuit judge appointed by the chief judge of the 22nd Circuit Court, the 22nd Circuit Court administrator or designee, and one Representative appointed by the Washtenaw County Bar Association Criminal Defense Law Section. The Oversight Committee shall review the list every twelve months. The Chief Judge of the 22nd Circuit Court shall review appeals from the decisions of the oversight committee.

- c. Attorneys must submit proof of professional liability insurance with their application. The policy's renewal date must be included in the application. To remain on the list attorneys must submit verification of their insurance renewal annually prior to the Oversight Committee meeting in October. If at any time during the year, 6 or more eligible applicants submit their applications for consideration, the 22nd Circuit Court Chief Judge may, at his/her discretion, convene a special meeting to consider those applications.
- d. Applications may be submitted at any time, but the list will be reviewed and updated annually in October. The Oversight Committee shall meet every October, and otherwise as necessary, to review all applications and determine the eligibility of applicants. Applicants will be considered for placement on one or both of the following;
  - 1) Appointments on probationable felonies and drug cases less than 50 grams (A List). In order to satisfy these eligibility requirements the applicant should provide verification that he/she has completed the Detroit/Wayne County Criminal Advocacy Program (or a similar substitute); or has one (1) year of experience with a public defender's office, prosecuting attorney's office, or the State Appellate Defender's Office; or verify and present their felony case experience to the court for approval.
  - 2) Appointments on non-probationable felony offenses (B List). Applicants must certify in writing that they have tried, as first chair, at least three (3) felony cases in the past 5 years and provide case numbers for those cases.
- e. The performance of attorneys already on the approved Felony appointment lists shall be reviewed annually by the Chief Judge utilizing the court's established performance surveys which have been submitted by those judges who presided over cases with appointed counsel. The survey includes the following categories; 1) Punctuality; 2) Knowledge of Law; 3) Preparedness; 4) Overall Acceptability for A list cases and 5) Overall Acceptability for B list cases.
- f. To remain on the list attorneys must submit verification of continued State Bar membership in good standing prior to the Oversight Committee meeting in October.
- g. Removal from Felony Appointment Lists can occur in two ways
  - 1) An affirmative vote from a majority of the members of the Committee
  - 2) At the discretion of the Chief Judge of the 22nd Circuit Court for significant indiscretion or conduct issues.

- h. Notification of removal from the Felony Attorney Appointment List will come from the 22nd Circuit Court Administrator's Office within one week of removal. If removal is by vote of the Committee, the removed attorney may assert the right to appeal the removal within 14 days of the removal notice. Notification of an appeal must be filed with the Court Administrator. Pursuant to this order, the Chief Judge shall review appeals from those decisions. Appeals will be decided within 14 days of the filing date.
- i. Attorneys must make application for placement on the approved Juvenile list. The Court will individually approve attorneys for placement on the appointment list. Eligible attorneys requesting to be placed on the appointment list must present proof of completion of Washtenaw County Trial Court approved training in juvenile law. The Court will accept such certification as proof of approved training in juvenile law. Eligible attorneys may present proof of other equivalent training, such as extensive experience in Juvenile Court practice, which will be reviewed by the Chief Judge on an individual basis.
- j. Eligibility to remain on the Juvenile appointment list will be reviewed annually in October. The review shall include 1) Punctuality; 2) Knowledge of Juvenile Law and 3) Preparedness. The Chief Judge retains the power to remove any attorney from the list based upon the criteria above or at any time for significant indiscretions or conduct issues.
- k. To be a contract attorney, attorneys must successfully complete the Request for Proposal (RFP) process and win award of the contract. A separate RFP will be issued for the Juvenile Contract and another for the Felony Contract. The RFP shall be issued not more than every three years commencing in 2009.

### **3. Selection System**

- a. Felony Appointments, Operational Requirements.
  - 1) For felony cases, when a court appointed attorney is needed at the arraignment stage (or at any subsequent stage), the judge or magistrate shall appoint the next available attorney from the Indigent Defense Attorney Appointment List. The appointments shall be made in the order they appear on the list to ensure an equitable distribution of cases. The clerk of the unified office who is responsible for the preliminary examination docket shall keep records of appointments, including case numbers and dates of appointment and availability and/or removals. Judges may, at their discretion, appoint another attorney from the appointment list on a specific case for good cause stated on the record.
- b. Juvenile Appointments – See LAO C22 2015-06J / P81 2015-06J

#### 4. Fee Schedule

- a. Appointed attorneys will be compensated in accordance with the fee schedule set forth below. Requests for extraordinary fees above the scheduled fees must be submitted to the Court and assigned judge in writing and supported by appropriate documentation.
  
- b. Felony Cases:
  1. District Court Cases
    - I. Exam not held –disposed in district court - \$375
    - II. Exam held –disposed in district court - \$525
  
  2. Circuit Court Cases
    - I. Plea agreement cases- no exam held- \$750.00
    - II. Plea cases -exam held- \$900
    - III. Cases in which trial is held, up to 3 days - \$3,000
    - IV. Cap for each trial day thereafter - \$450
  
- c. Contract Attorneys will be compensated per the terms of the contract. The compensation will be a flat rate to the contract attorney firm.

#### 1. Payment of Fees

- a. Fee requests will be submitted at the conclusion of the final hearing for which they apply, on forms provided by the Clerk's Office or Trial Court Administration. Invoices for payment must be submitted to either the Clerk's Office or Trial Court Administration within six (6) months of the last court appearance on a given case or the invoice will be deemed untimely and will not be paid.
  
- b. The Court will normally make payment of approved fees within 30 days after submission of a proper request.
  
- c. Contract attorneys will be paid the annual contract fee on a monthly pro- rated basis.

2. Prior Appointments. All appointments prior to the effective date of this Order will remain in effect and compensation for services pursuant to those appointments will be made in accordance with the previous fee schedules.
3. Attorneys appointed under this Order shall have the ability to have a substitute attorney for critical court events and may allow another licensed attorney who is in good standing with the State Bar to act as a substitute counsel for any proceeding other than the actual bench or jury trial.
4. The Trial Court will maintain the following administrative records as defined in Supreme Court Administrative Order 1997-10 (A)(2)(c);
  - a. Number of appointments given to each attorney by the court.
  - b. Number of appointments given to each attorney by each judge of the court.
  - c. Total amount of public funds paid to each attorney by the court.
  - d. Total amount of public funds paid to each attorney for assignments by each judge of the court.
  - e. These records shall be maintained by the court pursuant to SCAO General Schedule 16 and shall be submitted annually to the State Court Administrative Office pursuant to MCR 8.123 (F).
  - f. The records will be available for inspection without charge in Trial Court Administration. Copies of the records shall be provided pursuant to the court's administrative order regarding inspection of records.

**IT IS SO ORDERED.**

Dated:           OCT 20 2015          



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David S. Swartz  
Chief Judge  
Washtenaw County Trial Court