

**REGULATIONS FOR APPOINTMENT OF COUNSEL
IN DEFENDER DISTRICT 26 (MECKLENBURG COUNTY)
IN CASES UNDER THE INDIGENT DEFENSE SERVICES ACT**

Effective July 22, 2020

I. Applicability

A. Generally

These regulations are issued pursuant to Rule 1.5 of the Rules for the *Continued Delivery of Services in Non-Capital and Non-Criminal Cases at the Trial Level*. They apply to all non-capital criminal and non-criminal cases in the trial division in Defender District 26 in which the provision of counsel is subject to the Indigent Defense Services Act of 2000 (G.S. 7A-498 through 7A-498.8) (hereinafter “IDS Act”).

B. Exceptions

1. In cases in which the defendant is charged with first-degree murder, an undesignated degree of murder, or an offense filed contemporaneously with or subsequently joined with such murder charges, the court shall appoint the IDS Office, which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Capital Cases*. However, the court shall appoint the Public Defender in Defender District 26 in cases in which the defendant or respondent was 17 years of age or younger at the time of the alleged offense and is not eligible for the death penalty; in such cases, the Public Defender shall appoint an attorney from his or her office or a private attorney from the appropriate list.
2. In cases in which a person is entitled to appointed counsel pursuant to G.S. 7A-451 with respect to appeal to the appellate division from an adverse ruling in the trial division, the court shall appoint the Office of Appellate Defender, which shall appoint counsel in accordance with the *Rules for Providing Legal Representation in Non-Capital Criminal Appeals and Non-Criminal Appeals*. The only exception to this procedure is in cases in which a death sentence has been returned, where the appellate entries made by the court shall reflect 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(a) of *Rules for Providing Legal Representation in Capital Cases*.

II. Administration of Regulations

The Public Defender in Defender District 26 (hereinafter “Public Defender”) is responsible for administering these regulations. The Public Defender shall coordinate with the court and local bar to ensure 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. Defendants in criminal cases (including defendants charged with criminal nonsupport but not including defendants charged with criminal contempt for failing to pay child support);
2. Adult respondents in involuntary commitment matters;
3. Persons responding to show cause orders for contempt of court unless covered by VI.3;
4. Defendants in non-capital motions for appropriate relief in which the court has found that sufficient grounds exist so as to entitle the defendant to a hearing;
5. Persons found to be material witnesses by the court;
6. Parents entitled to an attorney in abuse, neglect and dependency matters and termination of parental rights proceedings;
7. Parents in show cause hearings for delinquency matters;
8. Minors requesting judicial waiver of parental consent to abortion; and

9. Any other person who has a right to appointed counsel that is not otherwise described in these regulations.

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

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

B. Notice to Client

In cases assigned to the Public Defender, the court shall provide, on a form provided by the Public Defender, instructions to the client for contacting the Public Defender. When the court appoints the Public Defender for an incarcerated person via audio-video transmission, the court shall provide such notice to the person through the Sheriff's Department.

C. Preliminary Determination

Prior to the court's determination of entitlement to counsel, the Public Defender may pursuant to G.S. 7A-452(a) provisionally 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). Provisional 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. 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 administration of justice and subject to standards approved by the Office of Indigent Defense and paragraph IV(C). If the Public Defender assigns a case to private counsel, he or she shall record the reasons for doing so. If the Public Defender has appeared in court in the case before determining to assign the case to private counsel, the Public Defender shall move to withdraw before assigning the case to new counsel.

B. Conflicts

If 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 adopted by the Office of Indigent Defense Services.

C. Order of Appointments

1. The Public Defender shall maintain in his or her office a list of attorneys, duly qualified pursuant to Sections VIII and IX below, to handle cases assigned 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.
3. The Public Defender shall assign attorneys in strict rotation as provided 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 should return to that attorney for the next appointment unless the attorney indicated that he or she was unavailable in which case the attorney should be appointed in the normal sequence of appointments.
4. For purposes of time-sensitivity in abuse, neglect and dependency matters, the Public Defender will contact the first attorney in the order of sequence on the appropriate list and continue through the list until an attorney who is available to take a case is reached. If the Public Defender passes over the name of an attorney, the Public Defender will return to that attorney for the next appointment unless the attorney had indicated that he or she was unavailable, in which case the attorney will be appointed in the normal sequence of appointments.
5. In some instances, a judge may appoint an attorney who is on the list to handle a case in abuse, neglect and dependency matters. Once the Public Defender becomes aware of such appointment, the Public Defender will take that attorney out of rotation and place the attorney's name at the bottom of the sequence of appointment.
6. The Public Defender shall keep 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

When the Public Defender assigns an assistant public defender to a case, the Public Defender shall enter that information in the Case Management System. When the Public Defender assigns a case to private counsel, the Public Defender shall furnish a notice of appointment to the attorney by the most appropriate method under the circumstances and shall enter the appointment information in the Case Management System. The Public Defender shall also file the notice of appointment of private counsel with the Clerk of Superior Court in all cases and with the District Attorney in felony cases. Upon assigning a case to private counsel, the Public Defender shall furnish to the client instructions about contacting his or her attorney. The appointed attorney shall notify the client of his or her appointment to the case.

In abuse, neglect or dependency and termination of parental rights proceedings, the Juvenile Clerk's Office shall forward the summons and petition to the Public Defender by the most expeditious means possible. If the Public Defender assigns a case to private counsel, notice of the appointment will be furnished to the attorney by placing a copy of the petition and appointment in the attorney's box located in the Juvenile Clerk's Office. The Public Defender shall also file the notice of appointment of private counsel with the Juvenile Clerk's Office in all cases. The Public Defender will notify private counsel of their appointment by phone call and/or electronic mail.

In any case in which a petition for termination of parental rights is filed, unless good cause exists, the same attorney should be appointed to represent the parent in the termination proceeding if the parent has been represented by that attorney in the abuse, neglect, and dependency proceeding.

E. Withdrawal

Once the Public Defender has issued a notice of assignment 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 new counsel. An attorney who has been assigned to a case by the Public Defender may refuse that case for good cause and return the paperwork to the Public Defender's Office for reassignment.

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 or a case is dismissed in District Court to indict 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 Section IX of these regulations. However, if new charges are brought against a

former criminal defendant after disposition of unrelated, previous charges, there shall be no presumption that the attorney who represented the defendant on the previous charges should be appointed to represent that defendant on the new charges.

2. If an attorney is appointed to represent a client on one matter, and the attorney learns that the client requires representation in 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 withdraw from the first case so that the Public Defender may appoint all of the matters to other counsel who is on all of the appropriate lists.
3. If no single attorney is on all of the appropriate lists, the attorneys appointed to represent the client shall consult with each other to assure that the client's interests are protected.

G. Requests for Substitution of Counsel

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

VI. Assignments Not Covered by V

VI.1 Assignments by Council for Children's Rights

All juveniles are deemed indigent for the purposes of assigning representation. For persons entitled to counsel in the matters listed below, counsel shall be assigned in accordance with the procedures as described:

A. Determination

Cases involving juveniles alleged to be delinquent will be assigned under a general rotation procedure administered by the Council for Children's Rights (CFCR) for any case in which CFCR has a conflict.

B. Conflicts

If, after being appointed by the CFCR, the assigned attorney finds his or her office is unable to handle a case because of a conflict, the CFCR shall assign the case to private counsel in accordance with the regular rotation schedule approved in these regulations and any criteria adopted by the Office of Indigent Defense Services. If the CFCR assigns a case to private counsel, the CFCR shall record the reasons for doing so. If the assigned attorney has appeared in court in the case before the CFCR determines to assign the case to private counsel, the assigned attorney shall move to withdraw before the CFCR assigns the case to new counsel.

C. Order of Appointments

1. The CFCR shall maintain in its office a list of attorneys, duly qualified pursuant to Sections VIII and IX below, to handle cases assigned by the CFCR. Such lists shall be made reasonably available to the public upon request.
2. If the CFCR finds that the case should be assigned to private counsel, the CFCR shall assign an attorney from the appropriate list. No appointment shall be made by the CFCR of an attorney whose name does not appear on the list on file with the CFCR.
3. The CFCR shall assign attorneys in a regular rotation as provided by these regulations. The CFCR 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 CFCR passes over the name of an attorney, the CFCR should return to that attorney for the next appointment unless the attorney had indicated that the attorney is unavailable, in which case the attorney should be appointed in the normal sequence of appointments.
4. The CFCR shall keep a record of appointments and make the same reasonably available to the public on request. If the CFCR appoints an attorney who is not next in sequence, the CFCR shall record the reasons for doing so.

D. Notice

When the CFCR assigns an attorney to a case, the CFCR shall enter that information in the CFCR confidential database. When the CFCR assigns a case to private counsel, the assigning authority shall furnish a notice of appointment to the attorney by the most appropriate method under the circumstances and shall enter the appointment information in the CFCR confidential database. The CFCR shall also file the notice of appointment of private counsel with the Juvenile Clerk of Court and with the District Attorney in all cases.

Upon assigning a case to private counsel, the CFCR shall furnish to the juvenile or to the family of the juvenile instructions about contacting the juvenile's attorney. The appointed attorney shall notify the juvenile or the family of the juvenile of his or her appointment to the case.

E. Withdrawal

Once the CFCR has issued a notice of assignment of private counsel and that counsel has appeared in court, only the court may permit the attorney to withdraw. If the court permits the attorney to withdraw, the CFCR shall assign the case to a new private attorney. An attorney who has been assigned to a case by the CFCR may refuse that case for good cause and return the paperwork to the CFCR for reassignment.

F. Multiple Counsel

1. In assigning cases to private counsel, the CFCR shall appoint the same attorney on all pending matters concerning the juvenile if the attorney is on the appropriate list. However, if new charges are brought against a juvenile after disposition of unrelated, previous charges, there shall be no presumption that the attorney who represented the juvenile on the previous charges should be appointed to represent that juvenile on the new charges.
2. If a private attorney is assigned to represent a client on one matter, and the CFCR receives an appointment in another matter for which the initial attorney is not on the appropriate list, the initial attorney shall if requested by the CFCR withdraw from the first case so that the CFCR may then assign all of the matters to new counsel who is on all of the appropriate lists.
3. If no single attorney is on all of the appropriate lists, the attorneys appointed to represent the client shall consult with each other to assure that the client's interests are protected.

G. Requests for Substitution of Counsel

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

VI.2 Assignments by Special Proceedings Office

For cases involving persons entitled to counsel in the matters listed below, counsel shall be assigned in accordance with the procedures as described:

A. Determination

Cases involving respondents in incompetency cases filed under Chapter 35A of the North Carolina General Statutes will be assigned under a general rotation procedure administered by the Special Proceedings Office of the Clerk of Superior Court.

B. Conflicts - Not Applicable

C. Order of Appointments

1. The Special Proceedings Office shall maintain in its office the names of attorneys, duly qualified pursuant to Sections VIII and IX below, to handle cases assigned by the Special Proceedings Office.
2. If the Special Proceedings Office finds that the case should be assigned to private counsel, the Special Proceedings Office shall assign an appropriate attorney.

3. The Special Proceedings Office shall assign attorneys in a regular rotation as provided by these regulations. The Special Proceedings Office 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.
4. The Special Proceedings Office shall keep a record of appointments and make the same reasonably available to the public on request.

D. Notice

When the Special Proceedings Office appoints an attorney to a case, the information shall be entered into an appropriate data management system. The Notice of Hearing will contain the attorney's name and contact information. After the attorney is appointed, the attorney must come to the Special Proceedings Office to accept service of the Notice and Petition. The Sheriff's Department will serve the Notice and Petition on the Respondent.

E. Withdrawal

Once the Special Proceedings Office has issued a notice of assignment of counsel, the attorney may withdraw from the case by contacting the Special Proceedings Office. If the Special Proceedings Office permits the attorney to withdraw, the Special Proceedings Office shall assign the case to a new attorney and prepare a new order of appointment.

F. Multiple Counsel (Subsequent Proceedings)

When a case comes back before the Special Proceedings Office (called a subsequent proceeding), the same attorney that was appointed in the original case will be appointed in the subsequent proceeding. If the original attorney is no longer available, or the issues of the matter have changed in such a way that would make appointing the original attorney impractical, then a new attorney will be assigned.

G. Requests for Substitution of Counsel

For good cause, the Special Proceedings Office may replace previously appointed counsel with new counsel selected by the Special Proceedings Office and prepare an order of appointment to the new private attorney.

VI.3 Assignments by Family Court Administrator's Office

For cases involving persons entitled to counsel in the matters listed below, counsel shall be assigned in accordance with the procedures as described:

A. Determination

Cases involving defendants charged with contempt in child support, domestic, or domestic violence matters, unless assigned to the Public Defender pursuant to V.A. of these regulations, will be grouped by court session and appointed counsel from the list of attorneys participating in the Attorney-for-the-Day Program. The Attorney-for-the-Day Program, administered by the Family Court Administrator's Office, will schedule participating attorneys to provide legal representation for a specified court session. Attorneys will be compensated for their services based on a fixed rate per session.

B. Conflicts

If, after being appointed a case by the Family Court Administrator's Office through the Attorney-for-the-Day Program, an attorney determines that a conflict of interest exists, the Family Court Administrator's Office will reassign the case to another attorney appearing in court that same day. If all attorneys scheduled that day also have conflicts, then the Family Court Administrator's Office will reschedule the hearing for another day.

C. Order of Appointments

1. The Family Court Administrator's Office shall maintain in its office a list of attorneys, duly qualified pursuant to Sections VIII and IX below, to handle cases assigned by the Family Court Administrator's Office. Such lists shall be made reasonably available to the public upon request. No appointment shall be made by the Family Court Administrator's Office of an attorney whose name does not appear on the approved list on file with the Family Court Administrator's Office.
2. The Family Court Administrator's Office shall maintain monthly calendars with the dates that hearings are scheduled. The Family Court Administrator's Office will contact the attorneys on this list via listserv to determine their availability for the month.
3. The Family Court Administrator's Office shall assign available attorneys to open dates on an equitable basis but with the pre-eminent consideration of availability. Assignments will be made on a monthly basis. If an attorney has limited availability in any given month, he or she will not receive extra assignments the following month.
4. The Family Court Administrator's Office shall keep a record of appointments and make the same reasonably available to the public on request.

D. Notice

Each month the Family Court Administrator's Office shall notify the participants of the Attorney-for-the-Day Program of their assigned court dates. Notice will be achieved through email and attachment of the monthly calendar.

E. Withdrawal - Not Applicable

F. Multiple Counsel - Not Applicable

G. Requests for Substitution of Counsel - Not Applicable

VII. Committee on Indigent Appointments

A. Establishment of the Committee

The Indigent Representation Committee (hereinafter “Committee”) is established to assist the Public Defender with the implementation of the appointment regulations. The current Committee is a standing committee of the Mecklenburg County Bar and it is the intent of these regulations that the new Committee remain as such. The members of the current committee shall comprise the initial membership of the new Committee. The failure of any of the appointing authorities to make the appointments described below, or the failure of the Committee to meet or do any of the things authorized by these regulations, shall not preclude the Public Defender from performing any of the duties or taking any of the actions authorized by these regulations.

B. Membership of Committee and Terms

The following shall constitute the membership of the Committee:

1. One (1) Superior Court Judge position, to be appointed by the Senior Resident Superior Court Judge;
2. One (1) District Court Judge position, to be appointed by the Chief District Court Judge;
3. Four (4) private attorney positions, to be appointed by the President of the Mecklenburg County Bar in consultation with the Committee Chair;
4. One (1) position held by the Public Defender;
5. Two (2) Assistant Public Defender positions, to be appointed by the Public Defender;
6. One (1) Assistant District Attorney position, to be appointed by the District Attorney;
7. One (1) attorney from the Council for Children’s Rights, to be appointed by the Director of the Council for Children’s Rights; and
8. One (1) representative from the Family Court Administrator’s Office, to be appointed by the Family Court Administrator.

Regardless of the appointing authority, the Committee must comprise a majority of lawyers who are not court officials.

Any member who resigns or becomes ineligible to continue serving as a member should be replaced as soon as possible for the remainder of the term. Members of the Committee shall be appointed for terms of two (2) years, except for the Public Defender position, which shall be a permanent position for the Public Defender. The Chair of the Committee will be chosen by the President of the Mecklenburg County Bar in consultation with the outgoing chair of the Committee and the Public Defender.

C. Qualifications

Private attorney members of the Committee shall be attorneys who:

1. Are included as active or inactive members on one of the appointment lists, as defined in Section VIII.A.2;
2. Have practiced in one or more of the areas of law covered by the appointment lists for not less than five (5) years in Defender District 26; and
3. Are knowledgeable about practicing attorneys in Defender District 26.

D. Meetings

1. Meetings of the Committee shall be monthly but no less than quarterly. Discussions of the Committee, its records, and its actions shall be treated as confidentially as possible.
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 conjunction with the Committee, is responsible for determining the eligibility of attorneys for appointment to cases under these regulations. The Committee shall identify, and enforce adherence to, minimum expectations for the performance of assigned counsel and shall assist counsel in meeting, and striving to exceed, those expectations. Assigned counsel shall meet, and strive to exceed, minimum expectations for the performance of counsel.

In discharging this responsibility, the Committee shall:

1. Categorize by levels of seriousness and difficulty the types of cases in the jurisdiction;
2. Establish standards detailing the qualifications attorneys must have before being assigned cases at each level;

3. Establish rosters of attorneys who have applied to receive assignments and who have been found qualified to handle a given level of cases;
4. Review and categorize all incoming cases, and assign them to available, qualified attorneys on the appropriate roster;
5. Ensure that lawyers new to the roster receive a mandatory orientation on indigent defense policies, procedures and on local criminal practice before assigned cases;
6. Establish any training requirements and make such available;
7. Establish policies regarding complaints from clients and others; and
8. Make any other recommendations regarding the operation of the local indigent defense program.

The Public Defender and the Committee shall establish procedures for carrying out 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 providing the Committee members with materials pertinent to their business, and maintaining records relating to the actions of 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 Chair of the Committee on a form provided by 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 Section IX for placement on the list. All materials required by Section 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 Chair or the Public Defender, and the Public Defender shall remove the attorney's name from the list and notify the appropriate parties. If an attorney has had his or her name removed from a list, the attorney must reapply to be on that list. Attorneys may at their request be transferred to inactive status on any of the lists and may be reactivated upon their request at the Committee's discretion.

3. Attorneys who are already qualified and currently on a particular list are to be placed on that same list upon approval by the Committee without formal application.

B. Addition to Lists

The Public Defender in conjunction with the Committee shall determine whether the attorney meets all of the applicable standards in Section 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 and the Committee shall review each request by an attorney to be added to a list. The Public Defender and the Committee may request that an attorney applicant submit additional information, including appearing before the Committee to be interviewed. Any member of the Committee may discuss requests with other members of the bar and the bench and may relate information obtained thereby to other members of the Committee. By applying to be included on a list, an attorney applicant consents to the confidentiality of such inquiries. The Committee may hold a request in abeyance for a reasonable period of time while obtaining additional information.

C. Removal from Lists

The Public Defender in conjunction with the Committee may remove an attorney from a list if at any time an attorney no longer meets the standards set forth in Section IX for the list on which he or she is placed, does not meet the performance standards in Section 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 the 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 and the Committee 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 is removed. The Public Defender shall inform the attorney in writing of the basis for removal within 60 days of the action. The Public Defender, along with the Indigent Representation Committee, 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 may 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 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 law in North Carolina.
2. Be competent to represent clients according to the *North Carolina Rules of Professional Conduct*.
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 approved by the Indigent Representation Committee;
 - b. Has available to clients a reliable means of communication, including a non-long-distance phone line, separate from home line, 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 as provided in Section VIII above.

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 List 4A 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 as

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 4B.

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, as appropriate, to the court and to any other appointing authority as described in Section VI, above, the current list of attorneys subject to appointment in Defender District 26. The Public Defender or his or her designee shall update the list as soon as possible, but no less than every three (3) months, if there are 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 one (1) morning session of District Administrative Court, currently held in Courtroom 1130, one (1) session of District Domestic Violence Trial Court, currently held in Courtroom 4130, one (1) session of District Trial Court, currently held in Courtrooms 4150, 4170, and 4310, and one (1) morning session of Probation Violation Trial Court, currently held in Courtroom 4330; 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.

The applicant must also show that he or she has attended or participated in at least eight

(8) hours of approved continuing legal education within the past two (2) years in the area of criminal law. Approved training is that devoted to non-capital criminal defense, as well as special topics relevant to indigent defense, ethics, and defender resources, provided by the Mecklenburg County Bar, the North Carolina Office of Indigent Defense Services, the UNC School of Government, the North Carolina Bar Association, the North Carolina Advocates for Justice, or another entity designated by the Office of the Mecklenburg County Public Defender, the Mecklenburg County Bar or the North Carolina Office of Indigent Defense Services.

In addition to the materials contained in the Orientation Packet referred to above, the applicant must be familiar with the following:

- a. Twenty-Sixth Defender District Policies and Procedures Concerning Court-Appointed Counsel (November 2010):
www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/1488.pdf
- b. Criminal Case Management Plan (CCMP) and Administrative Order Adopting Criminal Rules (July 2010):
www.nccourts.org/Courts/CRS/Policies/LocalRules/Documents/1168.pdf
- c. Ethics & Practice: Billing in Appointed Indigent Cases
<https://www.sog.unc.edu/courses/course-materials/powerpoint-slides-ethics-practicebilling-appointed-indigent-cases-non-capital-and-non-criminal> and
<https://www.sog.unc.edu/courses/course-materials/whats-billable>
- d. Race & Criminal Justice System: www.sog.unc.edu/courses/webinars/2011-criminallaw-lunchinar-series-part-iii-race-criminal-justice-system
- e. 2011 Criminal Law “Lunchinar Series, Part II: Calculating Jail Credit:
www.sog.unc.edu/courses/webinars/jail-credit-and-sentencing-district-court
- f. Developing an Investigative and Discovery Plan:
www.sog.unc.edu/courses/webinars/developing-investigation-discovery-plan
- g. Understanding Addiction and Drugs of Abuse:
www.sog.unc.edu/courses/webinars/understanding-addiction-and-drugs-abuse

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, by identifying a mentor, subject to the Committee’s approval, or having one assigned by the Mecklenburg County Bar and by obtaining the mentor’s signature on the training-curriculum checklist.

List 2. Felony E through I:

An attorney on List 2 will represent indigent persons accused of felonies from classes E through I and felony probation violations in the District and Superior Courts. An attorney on List 2 will also be appointed to represent existing clients on new or pending

misdemeanor charges, including, if necessary, trial de novo if the client exercises his or her right to a jury trial. An attorney on List 2 who does not have the required jury trial experience described below must have previously served as second chair on a jury trial or have a second chair, if reasonably available, appointed by the Court to assist with the attorney's first trial.

Requirements: To qualify for List 2, an applicant attorney must have been licensed to practice law for at least two (2) years and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in felony cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also demonstrate that he or she is competent to try a superior court case before a jury and otherwise has the ability to handle felony cases in superior court. The applicant must certify that he or she has tried as lead or co-counsel at least two (2) jury trials to verdict. As an alternative to jury trial experience, the applicant may show completion of at least twelve (12) hours of continuing legal education in the area of criminal jury trials.

An applicant who has not recently practiced in non-capital criminal court prior to the adoption of these standards must also complete the requirements for List 1 and have two (2) attorneys who are not in the applicant's law firm and who are not from the same law firm, who have engaged in the practice of law for not less than five (5) years, and who have felony experience, state in writing that they believe the applicant is competent to represent criminal defendants charged with felonies and that they recommend that he/she be included on the list.

List 3. Felony A through D: An attorney on List 3 will represent indigent persons accused of felonies from classes A through D in the District and Superior Courts subject to I.B. above. A lawyer on List 3 will also be appointed to represent the client on new misdemeanors or non-capital felony charges of any class or misdemeanors or non-capital felony charges of any class pending at the time of the original appointment on the felony cases. The attorney will also be expected to represent any misdemeanor client who exercises the right to trial de novo in superior court after conviction of a misdemeanor in district court. An attorney on this list may also represent a defendant who is under seventeen years of age and charged with a Class A felony as described in I.B., above. An attorney on List 3 who has not tried before a jury a case involving a charge covered by this list must have previously served as second chair on a jury trial of such a charge or have a second chair, if reasonably available, appointed by the Court to assist with the attorney's first trial of such a charge.

Requirements: To qualify for List 3, an applicant attorney must have been licensed to practice law and have recently practiced adult criminal law on a consistent basis for not less than five (5) years and must demonstrate that he or she has the required legal knowledge and skill necessary for the representation in serious felony cases in superior court and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must certify that he or she has tried as lead counsel or individually at least three (3) jury trials to verdict. To remain on List 3, the applicant

must certify every three (3) years that he or she has attended at least nine (9) hours of continuing legal education relevant to representation of high-level felonies.

An applicant who has not recently practiced in non-capital criminal court prior to the adoption of these standards must also complete the requirements for List 1 and have two (2) attorneys who are not in the applicant's law firm and who are not from the same law firm, who have engaged in the practice of law for not less than five (5) years, and who have felony experience, state in writing that they believe the applicant is competent to represent criminal defendants charged with felonies above Class F and that they recommend that he/she be included on the list.

List 4A. Juvenile Class A1-3 Misdemeanors, Class H-I Felonies, Probation

Violations, and Motions for Contempt: Attorneys on List 4A will represent juveniles alleged to be delinquent of class A1-3 misdemeanors, class H-I felonies, probation violations, and motions for contempt in the juvenile courts. An attorney on this list may continue to represent a juvenile if the juvenile's case is transferred to Superior Court if the attorney is qualified by the Public Defender to represent adults in that class of felony case in Superior Court, subject to the second-chair requirements for that list. If the attorney is not qualified by the Public Defender to represent adults in that class of felony case in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

Requirements: To qualify for List 4A, the applicant must have recently practiced juvenile delinquency or adult criminal law for at least one (1) year and must certify that he or she has read and is familiar with the Juvenile Code and the local rules governing juvenile court in the county or judicial district. The applicant must certify that he or she has shadowed an attorney who is currently on the list for two (2) court sessions; has spent no less than one (1) hour becoming familiar with the practices and procedures of the court counselor office in the county or district and has met with its Chief Court Counselor(s); and has become familiar with the Office of the Juvenile Defender by visiting the website and subscribing to the blog and listserv. Within the first year of practice on the list, the attorney must certify that he or she has conferred with the director of the nearest juvenile detention facility, or the director's designee, in person or by telephone and has become familiar with detention center policies and procedures.

To remain on List 4A, an attorney must complete at least six (6) hours of approved juvenile delinquency training within the first two (2) years of practice on this list, preferably with three (3) hours in the first year, and must thereafter complete at least three (3) hours of approved juvenile delinquency training or such other comparable training as allowed by the Committee every two (2) years. Approved training is that devoted to juvenile law and procedure, as well as special topics relevant to juvenile court, such as adolescent development, mental health, special education, substance abuse, racial and ethnic bias, and cultural issues, provided by the Office of the Juvenile Defender, the Office of Indigent Defense Services, the UNC School of Government, the North Carolina Bar Association, the North Carolina Advocates for Justice, the Council for Children's Rights, the National Juvenile Defender Center, the Southern Juvenile Defender Center, or

another entity approved by the Office of the Juvenile Defender or the Office of Indigent Defense Services.

All attorneys on the indigent juvenile lists must understand that in all juvenile cases speedy representation is of the essence. Almost all cases, by the time they are processed and in the hands of an attorney, will require a court appearance within three (3) days. Therefore, any attorney who wishes to be appointed to juvenile cases must understand that being placed on the juvenile list will necessitate being available to accept appointments on short notice.

List 4B. Juvenile Felonies A-G: Attorneys on List 4B will represent juveniles alleged to be delinquent of class A-G felonies in the juvenile courts. An attorney on this list may continue to represent a juvenile if the juvenile's case is transferred to Superior Court if the attorney is qualified by the Public Defender to represent adults in that class of felony case in Superior Court, subject to the second-chair requirements for that list. If the attorney is not qualified by the Public Defender to represent adults in that class of felony case in Superior Court or wishes not to represent the juvenile in Superior Court, another qualified attorney will be appointed by the court as soon as practicable, but no later than prior to the probable cause hearing.

Requirements: To qualify for List 4B, the applicant must have recently practiced in juvenile delinquency or adult criminal superior court on a consistent basis for at least three (3) years and must certify that he or she has successfully completed all of the requirements of List 4A. To remain on the list, an attorney must complete at least three (3) hours of approved juvenile delinquency training as defined above in List 4A, or other comparable training, every two (2) years of practice on this list.

All attorneys on the indigent juvenile lists must understand that in all juvenile cases speedy representation is of the essence. Almost all cases, by the time they are processed and in the hands of an attorney, will require a court appearance within three (3) days. Therefore, any attorney who wishes to be appointed to juvenile cases must understand that being placed on the juvenile list will necessitate being available to accept appointments on short notice.

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.

Requirements: To qualify for List 5A, the applicant must certify that he or she has read and is familiar with the law relevant to guardianship and disabled adult proceedings, including North Carolina General Statutes Chapters 35A and Chapter 108; the applicant must have observed at least three (3) guardianship proceedings in the county, including, if possible, one (1) contested guardianship proceeding, one (1) restoration proceeding, and one (1) Chapter 108 proceeding in the county; and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in guardianship and disabled adult proceedings and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also certify that he or she

has attended at least three (3) hours of continuing legal education in relevant law within the past two (2) years, if such training is reasonably available.

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

Requirements: To qualify for List 5B, the applicant must certify that he or she has read and is familiar with Section 90-21.6 through 21.10 of the North Carolina General Statutes and other relevant law on judicial waiver and must demonstrate that he or she has the required legal knowledge and skill necessary for representation in judicial waiver cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

List 5C. Civil Commitment: Attorneys on List 5C will represent respondents in civil commitment matters.

Requirements: To qualify for List 5C, the applicant must certify that he or she has read and is familiar with the law relevant to civil commitment, including North Carolina General Statutes Chapter 122C; the applicant must have observed at least three (3) civil commitment hearings in the county, including, if possible, one (1) commitment hearing involving an adult, one (1) voluntary or involuntary commitment hearing involving a minor, and one (1) hearing involving an incompetent adult being admitted by a guardian; and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in cases listed in this category and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in the area of civil commitment law within the past two (2) years, if such training is reasonably available.

List 6. Child Support Enforcement Actions: Attorneys on List 6 agree to accept child support enforcement cases representing the child support obligor or the person attempted to be held in contempt for whatever purpose.

Requirements: To qualify for List 6, the applicant must certify that he or she has read and is familiar with Chapters 5, 50, and 110 of the North Carolina General Statutes and other relevant law on child support enforcement; the applicant must have observed at least one (1) child support enforcement court session and one (1) child support contempt hearing in the county; and the applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in child support enforcement cases and will apply that knowledge and skill with appropriate thoroughness and preparation. The applicant must also show that he or she has attended at least three (3) hours of continuing legal education in the area of child support enforcement law within the past two (2) years, if such training is reasonably available.

List 7. Parent Representation List: Attorneys on List 7 will represent parents in abuse, neglect, and dependency cases and in proceedings to terminate 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 not to do so exists, appoint the same attorney to represent the parent in the termination proceeding who represented the parent in the abuse, neglect, and dependency proceeding.

Requirements: To qualify for List 7:

1. The applicant must certify that he or she has read and is familiar with Section 7B-100 through 7B-1112 of the North Carolina General Statutes and other relevant law; and
2. The applicant must have read the “Local Rules and Procedure for Juvenile Abuse, Neglect and Dependency Cases for the 26th Defender District Family Court Division”; and
3. The applicant must have observed one (1) of each of the following hearings in the county: a non-secure custody hearing, a contested adjudication/disposition hearing, a review hearing, a permanency planning hearing, a Family Drug Treatment Court session, and one contested termination of parental rights hearing. It is preferred that the applicant observe more than one of each type of hearing; and
4. The applicant must have attended at least three (3) hours of continuing legal education in the area of parental rights law within the past year and provide a copy of the registration form to the Public Defender; and
5. In order to remain on List 7, each attorney must complete at least three (3) hours of continuing legal education relating to abuse, neglect, dependency, and termination of parental rights per calendar year. The deadline will be December 31 of every calendar year. Each attorney is responsible for providing to the Public Defender a copy of the registration form; and
6. The applicant must attend the Parent Attorney Orientation provided by the Public Defender; and
7. Two (2) attorneys who are not in the applicant’s law firm and not from the same law firm, and who have engaged in the practice of law for not less than five (5) years and who have experience representing parents in abuse, neglect, and dependency cases and in proceedings to terminate parental rights in Defender District 26, have stated in writing that they believe the applicant is competent to represent the parents of juveniles subject to abuse/neglect/dependency proceedings, and termination of parental rights proceedings, and that they recommend that he or she be included on the list; and
8. The applicant must demonstrate that he or she has the required legal knowledge and skill necessary for representation in these cases and will apply that knowledge and skill with appropriate thoroughness and preparation.

List 8. Motion for Appropriate Relief (Non-Capital) List: In addition to the General Requirements under Section IX(A), an attorney who has been licensed to practice law for two (2) years or more may be included on the Motion for Appropriate Relief List (Non-Capital) if:

1. The applicant has demonstrated proficiency in the field of criminal trial practice, and
2. Two (2) attorneys who are not in the applicant's law firm and not from the same law firm, and who have engaged in the practice of criminal law for not less than five (5) years, have stated in writing that they believe the applicant is competent to represent criminal defendants charged with felonies and that they recommend that he or she be included on the list, and
3. The applicant is competent to represent criminal defendants on motions for appropriate relief.

D. Emergency Representation in Adult Cases

All attorneys on the indigent lists should understand that in most criminal cases speedy representation is of the essence. Many cases, by the time they are processed and in the hands of an attorney, will require a court appearance within five (5) days. For the purposes of these regulations, a case requiring a court appearance within five (5) working days from the time the notice of appointment is received in the office of the Public Defender is to be designated as an "Emergency" case. Emergency cases shall be assigned by rotation only to those attorneys on the Misdemeanor and Felony Lists who have indicated their willingness to accept such cases. Usually, this requires that the attorney come to the Public Defender's Office to pick up the paperwork or receive a telefax. It is expected, based on past experience, that these attorneys will receive more cases than those not on the emergency designation. Therefore, any attorney who wishes to be appointed to emergency cases should so indicate his or her willingness to accept such cases. The attorneys so indicating will be noted on the lists.

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. Maintaining regular contact with clients.
2. Appearing in court 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. Reporting a North Carolina State Bar Complaint that has been lodged against them to the Public Defender or appointing authority 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. Declining 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. Visiting and conducting an initial interview of an incarcerated client within three (3) business days after counsel receives notice of appointment to the client's case, absent justifiable excuse (e.g., illness, jury trial, etc.). If necessary, counsel may arrange for a designee to conduct the initial interview.
6. Fully informing the client as to the status of his/her case.
7. Advising the client 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 or contact the Public Defender for reassignment. If notice of appeal is to the appellate courts, the attorney shall assist the defendant in applying for assistance of appellate counsel.
8. Providing competent representation to clients.
9. In abuse, neglect and dependency cases and proceedings to terminate parental rights, preparing the appropriate paperwork to ensure incarcerated clients who want to appear are transported to their hearings in Juvenile Court to include adjudication/disposition hearings, the initial permanency planning hearing and termination of parental rights hearings at minimum.
10. Adhering to the Rules of Professional Conduct of the North Carolina State Bar.

Failure to provide minimum standards of representation as set forth above, as set forth in local practice, and as set forth by the North Carolina State Bar 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 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, in conjunction with the Committee, may modify this plan with the approval of the Office of Indigent Defense Services.

Before assuming responsibility for direct representation of clients in cases not handled by the Public Defender prior to the adoption of these regulations, the Public Defender shall obtain the approval of the Office of Indigent Defense Services.

XII. Adoption and Certification

These regulations were adopted by Public Defender Kevin Tully and the Indigent Representation Committee of the Mecklenburg County Bar and became effective on October 18, 2011.

These regulations were updated to conform with the IDS Uniform Regulations for Appointment of Counsel mandated by G.S. 7A-498.3(b1) and became effective July 22, 2020.

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