

## **OAKLAND COUNTY INDIGENT DEFENSE PROGRAM POLICY AND PROCEDURES**

### **POLICY**

On October 29, 2020, the Michigan Department of Licensing and Regulatory Affairs formally approved Michigan Indigent Defense Commission Act Standard 5 – Judicial Independence for implementation by all court funding units in the State. Standard 5 requires that Oakland County, as the funding unit for the Oakland County Circuit Court, manage and operate the indigent defense program (“IDP”) for the Circuit Court. Circuit Court Judges may, however, participate in evaluating attorney qualifications and performance and may offer suggestions for the operation of the IDP.

In response to Standard 5, the County has created an Indigent Defense Services Office (“IDSO”), which is managed by a Chief Attorney. The employees of the IDSO are County employees, but they report to the County Executive rather than the Circuit Court.

In order to fully implement Standard 5, the IDSO finds it necessary to set forth policies and procedures for selecting, appointing, monitoring the performance of, and compensating counsel who represent indigent adults charged with crimes in the Oakland County Circuit Court, for the review of certain decisions made by the Chief Attorney of the IDSO, and for the maintenance of records of appointment activity.

The policy and procedures established in this document do not apply to the attorneys employed by the Oakland County Public Defender’s Office. The Public Defender has sole discretion over the employees of that office, the cases to which they are assigned, and any applicable employee disciplinary proceedings.

The Chief Attorney of the IDSO and the staff of the IDSO is responsible for the management and operation of this Policy and the Procedures set forth herein. The effective date of the original Policy and Procedures document was **December 2, 2021**. This version of the Policy and Procedures makes certain changes in response to the implementation of MIDC Standard 7 concerning attorney performance evaluations. This document replaces any and all prior versions.

## **PROCEDURES**

### **I. CRIMINAL ASSIGNMENT COMMITTEE**

1. The Criminal Assignment Committee (“CAC”) consists of eleven members. The Chief Attorney is the Chairperson of the CAC and is a voting member. If there are other attorneys employed by the IDSO, the Chief Attorney may designate one of those attorneys as the Chief Attorney’s designee for one or more CAC meetings.

Five of the members of the CAC are attorneys appointed by the President of the Oakland County Bar Association (OCBA), and these attorneys are voting members. The five attorney members serving on the CAC as of the effective date above will continue to serve the remainder of their current two-year term and may be re-appointed to further two-year terms in the discretion of the OCBA President.

Five of the members of the CAC are Judges from the 6th Circuit Court, and these Judges are appointed by a method determined by the Bench of the 6th Circuit Court. In order to comply with MIDC Standard 5, the five judicial members are non-voting members. The five judicial members serving on the CAC as of the effective date above will continue to serve the remainder of their current two-year term and may be re-appointed to further two-year terms in the discretion of the 6th Circuit Court Bench.

Though they may not vote, the five judicial members are integral members of the CAC and are “permitted and encouraged to contribute information and advice concerning the delivery of indigent criminal defense services, including their opinions regarding the competence and performance of attorneys providing such services,” as provided in Section B of Standard 5.

2. The IDSO will maintain a list of attorneys eligible to be assigned to represent indigent adults charged with felonies in Oakland County. This list will be known as the “appointment list,” the “attorney roster,” or the “roster.”

The CAC will review the qualifications of attorneys applying to be added to the roster and will determine, by majority vote, the category placement level for each applicant.

The CAC will use the same procedure to determine whether a roster attorney should be moved to a different category level.

3. The criteria, standards, and policies of the CAC will be available for inspection at the IDSO and on the IDSO website.
4. The CAC will also hear and decide appeals of the Chief Attorney's denials of any requests by a roster attorney for expert or investigator assistance, and the Chief Attorney's decision to require a roster attorney to participate in a Performance Improvement Plan (PIP).
5. A quorum of the CAC is required to conduct a meeting. A quorum is defined as a majority of the members eligible to vote. A majority of those members present and eligible to vote is required to transact business.
6. Meeting minutes and vote totals for any issue requiring a vote by the CAC will be recorded.
7. The IDSO will keep records of all business coming before the CAC and may disclose those records if they are responsive to a properly filed Freedom of Information Act request.
8. The CAC does not and will not discriminate against any person on the basis of race, color, religion, national origin, age, sex, height, weight, sexual orientation, gender identity, marital status, partisan considerations, or disability under the Elliott-Larsen Civil Right Act, 1976 PA 453, MCL 372101 to 37.2804, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq, and the Americans with Disabilities Act of 1990, 42 U.S.C §12101 et seq.

## II. ELIGIBILITY TO SERVE AS ASSIGNED COUNSEL

As determined by the CAC, each felony case will be categorized for purposes of this appointment system. Felony cases are classified in the following categories, based on the maximum penalty of the most serious underlying criminal charge. Habitual Offender status is not considered when determining category placement:

Category	Description
1	Capital offenses – maximum sentence of life.
2	High-Severity Felonies – maximum sentence <u>more than</u> 5 years but less than life.
3	Low-Severity Felonies – maximum sentence more than 2 years, up to and <u>including</u> 5 years.
4	Low-Severity Felonies – maximum sentence up to 2 years (including “High Misdemeanors”).

The CAC will determine each roster attorney's appropriate category placement. Category 1 attorneys are eligible to receive assignments in all categories. Attorneys in category 2 are also eligible to receive assignments in categories 3 and 4. Attorneys in category 3 are also eligible to receive assignments in category 4.

Any attorney approved by the CAC, regardless of category, is eligible to receive assignments for Probation Violation hearings, bench warrant arraignments, Oakland County Jail arraignments, and lineups.

Eligibility to serve as assigned counsel will be determined as follows:

1. Attorneys seeking to be added to the roster must submit a complete application which is available on the IDSO website. Applications will be evaluated using the requirements set forth in MIDC Standard 7.
2. The Chief Attorney will forward all received applications to the CAC. The CAC will review the application and determine the applicant's qualifications to serve as assigned counsel in any one or all of the categories of criminal cases. Applications will be reviewed quarterly at CAC meetings. Additional meetings may be called at the discretion of the Chief Attorney or the Chief Attorney's designee.
3. Newly added roster attorneys must complete all MIDC Continuing Legal Education ("CLE") requirements.
4. A current roster attorney may petition the CAC for reclassification to a higher category. This is done by completing the attorney application on the IDSO website and alerting the Chief Attorney that it has been completed. The CAC will then review the attorney's updated application information and determine whether the attorney meets the criteria for reclassification by using the requirements of MIDC Standard 7.
5. To remain eligible for the criminal assignment system roster, all attorneys must present evidence of their completion of MIDC CLE requirements by December 31<sup>st</sup> each year. Attorneys who fail to submit CLE evidence by December 31<sup>st</sup> will be made inactive on the appointment roster unless and until they provide proof of completion of MIDC CLE requirements.

### **III. ATTORNEY PERFORMANCE EVALUATIONS**

Pursuant to MIDC Standard 7, the IDSO has created a process for evaluating the performance of roster attorneys. The Principal Attorney, who reports to the Chief Attorney, will be primarily responsible for conducting performance evaluations. The IDSO will publish the evaluation criteria on its website. Roster attorneys will be expected to do the following:

1. Review and, when appropriate, follow the IDSO's performance guidelines;
2. Promptly comply with all requests for information from the Principal Attorney and cooperate with the Principal Attorney's efforts to conduct a performance evaluation;
3. Promptly provide information about the attorney's caseload and assignments of work;
4. Notify the Chief Attorney within seven days of being admonished or placed on contractual probation by the Michigan Attorney Grievance Commission; being disciplined by the Michigan Attorney Discipline Board or any other body that serves the same function in any state or federal jurisdiction; being held in contempt of court; being charged with a crime; being named as a respondent in a personal protection order proceeding in which the PPO is granted.

In the course of conducting a performance evaluation, the Principal Attorney may recommend to the Chief Attorney that the roster attorney be placed on a Performance Improvement Plan (PIP). A PIP is not considered to be a complaint against the attorney, or a disciplinary action by the IDSO. If the Chief Attorney places a roster attorney on a PIP and the roster attorney fails to comply with its conditions, the Chief Attorney will notify the CAC.

An attorney who is placed on a PIP may appeal the decision of the Chief Attorney to the CAC.

### **IV. COMPLAINTS AGAINST ATTORNEYS, SUSPENSION, OR REMOVAL**

An attorney's inclusion on the roster is a privilege and not a right. An attorney on the roster has no right or interest in remaining on the roster. An attorney on the roster may be suspended and/or removed pursuant to the following procedures.

1. The Chief Attorney may remove attorneys who do not regularly accept case appointments. This is not considered to be a removal for disciplinary reasons and the Chief Attorney may reinstate the attorney if the attorney decides to resume regularly accepting case appointments.

2. Generally, removals or suspensions from the roster should be preceded by a complaint. A complaint must be made in writing and submitted to the IDSO. A complaint is not required to be on any specific form, but the IDSO may provide a complaint form on its website for convenience. Any person may file a complaint, including the IDSO staff. The following are some non-exclusive reasons for filing a complaint against an attorney: false representations in the application, misrepresentations in court, failure to attend court dates, chronic tardiness, substance abuse, inadequate representation, disruptive or disrespectful courtroom behavior, contempt of court, notice of disciplinary action taken by the State Bar or any other State, federal or local Bar Association, and any criminal conviction in a local, state or federal court.
3. Upon receipt of the complaint, the Chief Attorney will review the complaint and determine if it should be dismissed or submitted to the CAC for review. The Chief Attorney may immediately suspend the named attorney from receiving appointments if, in the Chief Attorney's judgment, such action is warranted. The Chief Attorney will report this action to the CAC. The Chief Attorney will send a copy of the filed complaint to the attorney named in the complaint.
4. The following is a non-exhaustive list of factors the Chief Attorney may consider when imposing an immediate suspension:
  - a. If true, the conduct poses a serious risk of harm to a client or their case.
  - b. If true, the conduct demonstrates a significant lapse in judgment or ethics that calls the attorney's ability to practice law into question.
  - c. If the attorney is alleged to have engaged in criminal conduct, the alleged offense is serious enough to warrant immediate suspension because continued association with the attorney would bring the IDSO into disrepute, the attorney is in custody, or the nature of the offense calls the attorney's ability to practice law into question.
  - d. The alleged conduct is likely to happen again before remedial measures can be taken.
5. If the Chief Attorney determines that the complaint is meritless and should be dismissed:
  - a. The Chief Attorney will notify the person who submitted the complaint, and the named attorney, that the complaint was dismissed.
  - b. For informational purposes, the Chief Attorney will inform the CAC members of the complaint and dismissal by email, or at the CAC's next

regularly scheduled meeting.

6. If the Chief Attorney believes that the complaint may have merit:
  - a. The Chief Attorney will notify the named attorney of the complaint and invite them to submit a written response within 14 days. This submission date may be extended at the discretion of the Chief Attorney upon the written request of the named attorney.
  - b. The Chief Attorney will refer the complaint to the Principal Attorney for review and report. This review could include, among other things, meeting with the named attorney, conducting a casefile review (with privileged material redacted), conducting in-court observation, and surveying stakeholders. The named attorney is expected to cooperate with the Principal Attorney during the review.
  - c. If the Chief Attorney concludes that the complaint has merit after considering the named attorney's response and the Principal Attorney's review, the Chief Attorney will provide the complaint and all response and review documents to the CAC for evaluation. The Chief Attorney will schedule a CAC meeting within 60 days of this date to discuss the complaint.
  - d. The named attorney may be invited to attend the meeting if the CAC requests a further inquiry with the attorney. The named attorney has no vested right to attend the meeting absent an invitation to do so from the CAC.
  - e. The CAC may invite any person who may have information bearing on the determination of the complaint to the meeting. If the CAC determines that it will hear oral testimony from any person who is not a CAC member, except for the Principal Attorney, the CAC will invite the named attorney to give oral testimony as well. The oral testimony will not be given in an adversarial format, and the named attorney will not be permitted to cross-examine any other persons.
  - f. The CAC will determine what action to take on the complaint by majority vote. The CAC's decision is final and binding.
  - g. The Chief Attorney or Chief Attorney's designee will notify the person who submitted the complaint and the named attorney of the action taken.

## **V. PROCEDURES FOR APPOINTING COUNSEL**

1. Upon receiving a request for appointment of counsel the IDSO will refer to the list of attorneys eligible to handle the type of offense with which the defendant is charged. Upon confirming the availability of the next attorney on the list, notice of that appointment will be submitted to the District Court in which the appointment has been requested as well as to the appointed attorney.
2. Counsel will be appointed in rotation according to the date of their last appointment. Each assignment category will have a separate rotational list. An attorney who is unavailable for an assignment will not lose his/her place on the rotational list. After refusing a third appointment, the attorney will lose his/her place and be moved to the bottom of the rotational list. The Chief Attorney may remove an attorney from the roster if the attorney chronically refuses appointments. The Chief Attorney may temporarily place an attorney on inactive status if the attorney has exceeded the MIDC Standard 6 maximum caseload, until the attorney's caseload regains compliance with Standard 6.
3. The Chief Attorney or IDSO staff may remove a case from the rotational system and appoint the case to a qualified roster attorney if such action is appropriate to meet the needs of the case. The IDSO appointment database will retain a record of whether an appointment was made from the rotation or by manual assignment. The Chief Attorney or IDSO staff will designate a certain percentage of cases each year where the IDSO intends to appoint the Public Defender's Office as the attorney of record.

## **VI. COMPENSATION**

1. Attorneys must submit payment vouchers in a format approved by the IDSO. This format is subject to change at the discretion of the Chief Attorney and may include a web-based electronic submission. The attorney will be compensated pursuant to the IDSO Appointed Attorney Fee Schedule. The fee schedule is available on the IDSO website. Attorneys will comply with the requirements of the fee schedule, including any deadline set for payment voucher submissions.

## **VII. APPEAL OF DECISIONS OF THE CHIEF ATTORNEY**

1. The CAC will hear and decide appeals of the Chief Attorney's decision to deny (including a partial denial) a roster attorney's request for an expert or investigator, and the Chief Attorney's decision to place a roster attorney on a PIP.



2. The roster attorney must file a written request to appeal the Chief Attorney's decision with the Chief Attorney, who will forward the request for appeal to the CAC. The roster attorney must include any additional documentation the attorney wants the CAC to consider, and the Chief Attorney will forward this information to the CAC. The CAC will consider all documentation included with the request for appeal and may consider any additional documentation in its sole discretion.
3. Appeals of expert or investigator denials must be decided within 14 days of the date the roster attorney files a written request to appeal. PIP appeals must be decided within 30 days of the date the roster attorney files a written request to appeal.
4. The CAC is not required to hold a formal meeting to decide the appeal. A meeting will only be held if requested by a majority of the voting members of the CAC.
5. If the CAC elects to schedule a meeting, the roster attorney may be invited to attend the meeting if the CAC requests further information from the attorney. The roster attorney has no vested right to attend the meeting.
6. The CAC will review the Chief Attorney's decision for abuse of discretion and will decide the request for appeal by majority vote. The Chief Attorney will abstain from voting on any appeals. If the vote results in a tie, the Chief Attorney's decision is upheld.

#### **VIII. COMPILATION OF DATA**

1. The IDSO will annually compile and maintain the following records:
  - a. The number of appointments given to each attorney; and
  - b. The total amount of money paid to each attorney.

These amendments to the Oakland County Indigent Defense Program Policy and Procedures were reviewed by the Criminal Assignment Committee and approved by majority vote on April 29, 2025.

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Peter Menna, Chief Attorney

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Date