

**Oakland County Circuit Court**  
**Indigent Defense Counsel Appointment – Civil/Criminal Division**  
**Policy & Procedures**

**POLICY**

On September 18, 2019, the Michigan Supreme Court rescinded MCR 8.123 requiring courts to establish a local administrative order governing indigent defense counsel appointments. As such, the Oakland County Circuit Court LAO 2014-07 was administratively closed. However, the court finds it necessary to set forth a policy and procedures for selecting, appointing, monitoring the performance of, and compensating counsel who represent indigent parties in the Civil/Criminal Division of the Sixth Judicial Circuit, and for the maintenance of records of appointment activity. The Chief Circuit Judge and Circuit Court Administrator are responsible to superintend the policy and procedures. For consistency, the effective date of this document is retroactive to September 18, 2019.

**PROCEDURES**

**I. CRIMINAL ASSIGNMENT COMMITTEE**

1. A ten member Criminal Assignment Committee, consisting of five judges from the 6<sup>th</sup> Judicial Circuit Court selected by a method determined by the bench, and five representatives appointed by the President of the Oakland County Bar Association (OCBA), shall serve as a standing committee to determine the qualifications of attorneys applying to act as assigned counsel in criminal cases. Members of the Criminal Assignment Committee shall serve staggered two-year terms. Initially, two representatives appointed by the OCBA and two judges shall serve for a term expiring on September 1, 1997. Three representatives appointed by the OCBA and three judges shall serve for a term expiring on September 1, 1998. As set forth below, the Criminal Assignment Committee shall also be responsible for establishing the training and continuing legal education requirements for attorneys seeking to maintain their eligibility to serve as indigent defense counsel. The criteria, standards, and policies of the Criminal Assignment Committee shall be available for inspection at the OCBA offices, the office of the Court Administrator, and the Circuit Court's website.
2. The Criminal Assignment Committee shall develop and produce a performance survey to allow for feedback from the judiciary regarding assigned attorneys. The Criminal Assignment committee shall consider this feedback along with the attorney's experience, participation in criminal law training programs, and other law-related criteria in determining the continued eligibility of attorneys to serve as assigned counsel for indigent defendants.
3. The Criminal Assignment Committee does not discriminate on the basis of race, age, color, religion, national origin, gender, sexual orientation, disability or veteran status.

## II. ELIGIBILITY TO SERVE AS ASSIGNED COUNSEL

1. As determined by the Criminal Assignment Committee, the eligibility of attorneys seeking to serve as indigent defense counsel shall be evaluated and classified in the following categories:

Category	Description
1	Capital offenses – sentences with maximum of life imprisonment.
2	Major felony offenses – sentences in excess of five years' imprisonment to less than life imprisonment and negligent homicide.
3	Felony offenses – sentences in excess of two years' imprisonment up to and including five year's imprisonment.
4	Felony/High Misdemeanor offenses – sentences up to and including two years' imprisonment, except negligent homicide.

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.

2. Eligibility to serve as assigned counsel shall be as follows:
  - a. Attorneys seeking to be initially qualified as assigned counsel must attend the series of seminars sponsored by the OCBA Criminal Law Committee, or training at an equally recognized seminar (e.g. CDAM conferences, ICLE courses, NACDL seminars) as determined by the Criminal Assignment Committee. Applicants who qualify for placement in either Category 1 or 2 are not required to attend basic programs but are required to participate in appropriate training and continuing legal education (CLE) programs. The training and legal education requirements are to be of the highest standards.
  - b. Attorneys seeking to be qualified as assigned counsel must submit a complete application form to the Criminal Assignment Committee which will be available at the OCBA offices, the office of the Circuit Court Administrator, and the Circuit Court website.
  - c. Completed applications will be submitted to the Criminal Assignment Committee at the Circuit Court Administrator's office. The committee shall review the applications and determine the applicant's qualifications to serve as assigned counsel in any one or all of the above categories of criminal cases.
  - d. Attorneys may be qualified to receive Category 3 and 4 appointments upon 1) completion of the training program set forth in paragraph a. above, and 2) participation in the Criminal Mentor program or 3) as otherwise determined by the Criminal Assignment Committee.

- e. Trial experience, seminar attendance, participation in the Criminal Mentor program, second chair experience, and judicial feedback shall be among the criteria used in assigning counsel to specific categorical levels and in advancing counsel to the next category level.
- f. An attorney may petition the Criminal Assignment Committee for reclassification by submitting a written request to the Committee outlining the reasons for reclassification, including, but not limited to, increased experience, completion of various training programs, recommendation from judges and attorneys, second chair experience, and any other information relevant to an appropriate classification.
- g. To remain eligible for the criminal assignment system roster, all attorneys must annually present evidence of their completion of CLE approved by the Criminal Assignment Committee by December 31<sup>st</sup>. Attorneys who fail to submit CLE evidence by January 31<sup>st</sup> shall be automatically removed from the roster of appointed counsel. Attorneys may petition the Committee for reinstatement. The petition must include evidence of completion of CLE requirements for the previous year and the current year.

### **III. SUSPENSION OR REMOVAL**

An attorney's appointment to the criminal assignment system roster is a privilege and not a right. An attorney on the criminal assignment system roster may be suspended and/or removed pursuant to the policies of the Criminal Assignment Committee.

### **IV. PROCEDURES FOR APPOINTING COUNSEL**

Upon receiving a request for appointment of counsel in Category 3 and 4 cases only, the Circuit Court Administrator or his/her designee shall 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 shall be submitted to the District Court in which the appointment has been requested as well as to the appointed attorney. Counsel shall be appointed in rotation according to the date of their last appointment. An attorney who is unavailable for an assignment shall not lose his/her place on the rotational list. After refusing a second appointment, the attorney shall lose his/her place and be moved to the bottom of the rotational list. The Circuit Court Administrator shall notify the Committee if an attorney chronically refuses assignments.

In unusual or extraordinary circumstances, the Circuit Court judge to whom a criminal case has been assigned may appoint a lawyer to represent an indigent defendant outside of the ordinary rotational system provided that the lawyer so appointed has otherwise been deemed eligible to serve as indigent defense counsel by the Criminal Assignment Committee.

Upon receiving a request for appointment of counsel in Category 1 and 2 cases, the Circuit Court judge has the option of appointing an attorney to represent the indigent defendant from the list of attorneys eligible to handle the type of offense with which the defendant is charged or to request the Circuit Court Administrator or his/her designee to make the appointment in rotation from the designated Category 1 or 2 list.

Probation violations, infectious disease petitions, line-ups, emergency petitions, extradition cases, and other similar miscellaneous matters are specifically excluded from the above-described rotational system.

## **V. COMPENSATION**

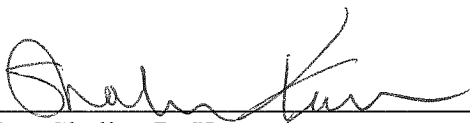
The attorney must submit a payment voucher to the Court Administrator's office indicating the case type and services rendered within the time provided by 6<sup>th</sup> Judicial Circuit Court LCR 6.101(B). The attorney will be compensated pursuant to the 6<sup>th</sup> Judicial Circuit Court's Appointed Attorney Fee Schedule. The fee schedule is available in the Court Administrator's office and on the Circuit Court website.

## **VI. MAINTENANCE OF RECORDS**

The Circuit Court shall annually compile the following records:

- 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; and
- d. Total amount of public funds paid to each attorney for assignments by each judge of the court.

These records will be maintained by the court pursuant to SCAO General Schedule 15, *Record Retention Schedule for Michigan Trial Courts*.

  
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Hon. Shalina D. Kumar  
Chief Circuit Judge

1-8-2020  
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Date

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### **NOTE**

This document replaces the administratively closed LAO 2014-07 Plan for Appointing Lawyers to Represent Indigent Defendants in Criminal Cases.