

Oakland County Circuit Court
Indigent Defense Counsel Appointment – Juvenile/Family 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On September 18, 2019, the Michigan Supreme Court rescinded MCR 8.123 requiring courts to establish a local administrative order governing indigent defense counsel appointments.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 2004-02 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 Family 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. APPOINTMENT CATEGORIES - MINIMUM QUALIFICATIONS

Counsel for indigents are required in a variety of capacities in the Family Division. These categories are set forth below. Minimum training, experience and other qualifications are set forth in Attachment I.

The appointment categories are:

- A. Attorney for respondent(s) in Child Protective Proceedings
- B. Attorney for juvenile in Delinquency Proceedings
- C. Lawyer-guardian ad litem (L-GAL) for children in Child Protective and Juvenile Guardianship Proceedings
- D. Saturday preliminary hearings attorney
- E. Standby attorney for juvenile matters
- F. Attorney for juvenile in Waiver Proceedings or Designated Cases
- G. Attorney for Respondent in Personal Protection Order violations
- H. Attorney for Domestic Cases when a party's liberty interest may be at stake

Attorneys for indigent parties on emergency petitions and attorneys for respondents in Friend of the Court Show Causes will be directly appointed on the record by the judge to whom the case is assigned. Documentation of these "on the record" appointments will be maintained by the individual judge's staff and will be forwarded to the court's business division, where they will be included in the court's annual report.

II. APPLICATION, EVALUATION, LISTING, AND ATTORNEY SELECTION

- A. Attorneys seeking appointment shall take the necessary training from the Oakland County Bar Association (OCBA), Governor's Task Force for Children's Justice, or another provider.
- B. The OCBA will certify a list of attorneys who have completed the OCBA training and provide the court with this listing.

- C. An attorney who has completed the training from OCBA or other provider may apply to the court indicating the type or types of appointments the attorney is seeking. The application will be available from Family Division administration. If the attorney's name does not appear on the certified list from the OCBA, the attorney must provide documentation of training to meet the minimum training requirement.
- D. The Chief Judge of the Circuit Court will appoint two Family Division Judges, two trial level juvenile referees and two representatives from Family Division administration to an attorney application review committee. The President of the Oakland County Bar Association will appoint two attorneys to this committee. Members will serve a term of two years, and terms of members will be staggered to insure continuity.
- E. The committee will review the attorney applications and any information received from applicants. The committee will establish a consolidated classification and generate an appointment list for each category. Any attorney applicant who does not make the list for a category will have his or her name placed on a "do not appoint" list for that category.
- F. Attorney applicants will be notified of their listings. An attorney who does not make the list may provide the committee with additional documentation that the committee may choose to consider, including additional experience, training, second chair experience or any other relevant information.
- G. Applications will be received continuously throughout the year and will be subject to the evaluation process above described. The review committee will meet periodically to review newly received applications and to add or delete attorney names from the appointment list.
- H. At least once each year, the committee will review the consolidated appointment lists. An individual attorney's classification may be adjusted. At the conclusion of the annual review process, a new list will be provided. The court will notify any attorney whose classification is adjusted as a result of this review.

III. APPOINTMENT PROCESS

- A. An appointment specialist within the Judicial Support unit of the Family Division will appoint attorneys for indigent parties in appropriate cases.
- B. To promote consistent, expert representation for an indigent party, the appointment specialist will attempt to reappoint an attorney who has previously represented the party if a new action requires appointment of counsel and jurisdiction of the first action was terminated.
- C. When court staff notify the appointment specialist that an attorney is needed, and there was no prior attorney appointment, the appointment specialist will use the appropriate list of qualified attorneys and contact up to three individuals whose names appear on the rotation. The first of the individuals contacted who accepts the appointment will be assigned the case.

- D. If the judges of the court have reserved to themselves appointment of attorneys for certain types of cases, the appointment specialist will contact the judge's office for instructions and will generate the appointment papers based on the attorney selected by the judge. A judge has the right of first refusal for hearing and the attorney appointment on any case for which a media request is made.
1. A judge making a discretionary appointment will consider the attorneys who are next on the appointment rotation, but may also consider the following factors:
 - a. The benefit of selecting an attorney with special expertise in the matters relevant to the case
 - b. The benefit of selecting an attorney whose office is located near the location of the indigent party
 - c. The benefit of reappointing an attorney who previously represented the indigent party
 - d. The attorney's availability, where immediate appointment will prevent unnecessary use of resources, unnecessary delay, or other undue hardship
 2. Where the judge selects the attorney, the judge shall indicate the reasons for so doing.
- E. In addition to the appointment of attorneys to individual cases, the appointment specialist will be responsible for the selection of attorneys for the court's standby attorney and Saturday preliminary hearing attorney schedules. In completing the schedules, the appointment specialist will use the rotational appointment method to fill the available dates on the calendar. When the calendar is full, the appointment specialist will publish and distribute it to the individuals and offices who need it.
- F. Where it is appropriate to deviate from the rotational appointment method due to the emergency nature of a proceeding, the need for a specific expertise, or other circumstance, the appointment specialist or appointing referee¹ will note the reason for deviation in the record of the appointment.
- G. A standby attorney appointment by a judge or referee to a specific case is exempt from the reporting of deviation from the rotational basis. The business division will separately track this information.
- H. The appointment specialist will maintain records of all appointments and will provide this information to the business division for inclusion in the court's annual report of appointment activity.

¹ Where the judge has empowered the referee to make the "on the record" appointment in emergency situations, the referee will note this appointment on the disposition sheet. The appointment specialist will not report this appointment, but the Business Division will capture the information through the attorney payment system.

- I. The appointment specialist will be responsible for communicating information about the appointment to the judge or referee hearing the case, the court desk, call director, or other information point.

IV. PERFORMANCE BY COUNSEL

- A. Judges and referees may monitor the performance of a Lawyer-Guardian Ad Litem (L-GAL) to insure compliance with statutory requirements using a short-form checklist or affidavit of service by L-GAL.
- B. Where a judge or referee determines an L-GAL has not fulfilled the statutory requirements, the judge or referee may note the performance concern and alert Family Division administration.
- C. Family Division administration will notify the attorney of receipt of the performance information and may receive correspondence from the attorney.
- D. Any performance information received (and rebuttal or explanatory information provided by the attorney) will be consolidated and given to the committee which establishes and maintains the consolidated appointment lists.

V. COMPENSATION

Compensation for counsel for indigent parties shall be made according to the established Oakland County Attorney Fee Schedule.

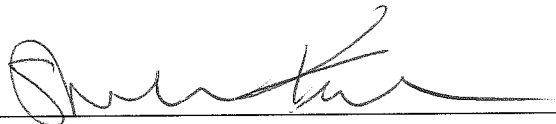
VI. APPOINTMENT AND ATTORNEY COMPENSATION RECORDS; ANNUAL REPORT

- A. The appointment specialist will maintain records of all appointments made.² If there has been a deviation from appointing on a rotational basis, the reason for the deviation will be included.
- B. The Business Division will maintain records of the appointments made by the court to each attorney, and the total public funds paid to each attorney by the court.
- C. The Business Division will maintain records of the appointment made by the appointment specialist of the court to each attorney, and the total public funds paid to each attorney for appointments by the court.
- D. The Business Division will compile an annual report which includes:
 1. The number of appointments given each attorney

² The emergency "on the record" appointments of attorneys in hearings conducted by referees will not be included in these records maintained by the appointment specialist but will be included in the statistics maintained by the Court's Business Division. See note 1.

2. The number of appointments given each attorney by the court and by each judge of the court
 3. The total public funds paid each attorney for appointments in the court; and
 4. The total public funds paid each attorney for appointments by each judge of the court
- E. The records required under this section shall be maintained pursuant to SCAO General Schedule 15.

01-08-2020
Date



Honorable Shalina D. Kumar
Chief Judge of the Circuit Court

This document replaces the administratively closed LAO 2004-02 Plan for Appointment of Counsel for Indigent Parties – Family Division. This document also modifies the appointment categories to conform with practice.

ATTACHMENT I

ATTORNEY APPOINTMENT QUALIFICATION CRITERIA

Type of Appointment	Minimum Training	Minimum Experience	Other Qualifications
<i>Category A</i>	Juvenile Advocacy ³	3 prior appointments as attorney for Respondent OR 3 second chairs w/mentor for Temp Wardship case	5 Years trial experience (which includes NA exp) for appointment on case seeking TPR at initial disposition.
Attorney for Respondent-Neglect Cases			
<i>Category B</i>	Juvenile Advocacy	3 prior appointments as attorney for juvenile OR 3 second chairs w/mentor	
Attorney for Juvenile in Delinquency Proceedings			
<i>Category C</i>	Juvenile Guardian Ad Litem ⁴	3 prior appointments as L-GAL OR 3 second chairs prelim/P-T through disposition w/ qualified GAL mentor	
Lawyer-GAL for child in Neglect and Juvenile Guardianship Proceedings	+ Juvenile Advocacy		
<i>Category D</i>	Juvenile Advocacy (DL)	3 prior case appointments (NA/DL), at least 1 of each	
Saturday Prelim Attorney (NA or DL)	Juvenile Guardian Ad Litem (NA)		
<i>Category E</i>	Juvenile Advocacy (DL)	3 prior case appointments (NA/DL), at least 1 of each	5 Years trial experience for appointment on case seeking TPR at initial disposition
Standby Attorney	Juvenile Guardian Ad Litem (NA)		
<i>Category F</i>	Juvenile Advocacy + Criminal Law ⁵	5 years trial experience	Judge's Selection, not from rotational list
Attorney for Juvenile in Waiver or Designated Case			
<i>Category G & H</i>	Criminal Law	None	Must be qualified as Category 4 or higher by Criminal Assignment Committee
Attorney for Respondent - PPO Violations Attorney for Individual whose liberty may be at stake.			

³ Oakland County Bar Association (OCBA) sponsored course, or equivalent course from another provider

⁴ Governor's Task Force training, OCBA Training, or equivalent course from another provider

⁵ OCBA, CDAM, ICLE, NACDL or other provider-sponsored courses