



THIRD JUDICIAL CIRCUIT
OF MICHIGAN

ROBERT J. COLOMBO, JR.
CHIEF JUDGE

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LOCAL ADMINISTRATIVE ORDER 2017 – 04

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT

**SUBJECT: PLAN FOR ASSIGNMENT OF COUNSEL IN THE THIRD CIRCUIT
COURT – CRIMINAL DIVISION**

This Administrative Order rescinds and replaces Administrative Order 2014-06 as it relates to assignments in the Criminal Division.

Pursuant to MCR 8.112 (B) and 8.123 (C), the Third Circuit Court adopts the following as its plan for assignment of counsel in the Criminal Division.

IT IS ORDERED:

- I. Criminal Assignment Committee
 - A. A seven member Criminal Assignment Committee (Assignment Committee) shall serve as a standing committee to determine qualifications, evaluate and approve attorneys seeking to serve as assigned counsel in criminal cases.
 - B. The Assignment Committee shall consist of four judges from the 3rd Judicial Circuit Court appointed by the Chief Judge or designee, one serving as an arraignment judge. Three attorneys eligible to receive appointments shall be appointed by the Wayne County Criminal Defense Bar Association. The Committee Chair shall be a member of the committee selected by the Chief Judge or designee and the Committee shall meet as often as the Chair directs.
 - C. The term of a member appointed to the board is one year ending December 31 of the calendar year of the appointment. Terms are automatically renewed unless a member is replaced by the appointing authority.

D. An individual appointed to fill a vacancy shall serve for the balance of the term of the member replaced.

II. Assignment Committee Review

A. Meeting minimum qualifications and training requirements does not necessarily ensure high-quality representation for indigent defendants. Therefore, the Assignment Committee shall review applicants annually to ensure counsels' ability, training, performance, and experience match the nature and complexity of the requested tier(s). The Committee shall establish the size of each Assignment Roster to promote and ensure high-quality representation for indigent defendants.

B. The Committee shall encourage and consider feedback from all stakeholders regarding qualifications and eligibility to serve as assigned counsel.

C. Decisions by the Assignment Committee shall be made with a majority vote of the Committee members present and not by proxy.

D. The Assignment Committee does not discriminate on the basis of race, age, color, religion, national origin, gender, sexual orientation, veteran status, or disability provided the disability does not impair defendant's 6th Amendment right to effective counsel.

III. Assignment Roster Tiers

A. The Criminal Assignment Roster (Assignment Roster) of attorneys approved to serve as indigent defense counsel shall be classified in the following tiers:

Tier	Description
1	Murder and Manslaughter
2	Criminal Sexual Conduct in the 1 st , 2 nd and 3 rd Degree. Child Abuse 1 st and 2 nd Degree
3	All other capital offenses and Possession or Possession with the Intent to Deliver 450 – 1000 grams of a schedule 1 or 2 substance.
4	Non-Capital offenses

1. Attorneys approved for tier 1 are also approved for tiers 3 and 4.
2. Attorneys approved for tier 2 are also approved for tiers 3 and 4.
3. Attorneys approved for tier 3 are also approved for tier 4.
4. Attorneys may elect to serve in one or more tiers.
5. Attorneys may elect to opt-out of any tier.

IV. Assigned Counsel Eligibility

A. Attorneys seeking to be qualified as assigned counsel shall:

1. Submit verification of the completion of all training and professional experience requirements for the tier to which they apply;
 2. Submit a completed application on a yearly basis to the Trial Court Services Office. Applications shall be available at the Trial Court Services Office and on the 3rd Judicial Circuit Court website;
 3. Be approved by the Assignment Committee before receiving appointments;
 4. Be a licensed attorney in the State of Michigan and be in good standing with the State Bar of Michigan; and
 5. Be a member in good standing of the Wayne County Criminal Defense Bar Association.
- B. Attorneys shall verify annually that approved CLE courses are completed by December 31st. Failure to do so shall result in automatic removal from the applicable Assignment Roster(s). A request for reinstatement made to Trial Court Services shall verify CLE completion.
- C. All applications and supporting documentation shall be submitted to Trial Court Services.
- D. Once a year, attorneys may request tier reclassification from the Assignment Committee.
- E. Service on the Assignment Roster is a privilege and not a right. Request for review of the Committee's decision, however, may be made in writing to the Presiding Judge of the Criminal Division within 21 days of notice being sent to the applicant of the decision. A formal hearing is not required. The review decision by the Presiding Judge shall be in writing and is a final Order for twelve months from the date of the Order.

V. Training and Experience Requirements

- A. Michigan Supreme Court Administrative Order 2016-2 requires court appointed attorneys complete at least 12 hours annually of CLE courses relevant to the representation of the criminally accused. Nothing in this Order changes this obligation.
- B. Tier 4 (non-capital offenses)
1. As part of complying with Administrative Order 2016-2, attorneys not previously approved for this tier shall complete CLE courses (which may include CAP courses) applicable to the following practice areas within the 12 months preceding the submission of a new application:
 - a. Practice in the 3rd Circuit
 - b. Training in the Michigan Rules of Evidence and effective direct and cross examination
 - c. Pre-trial motions practice
 - d. Collateral consequences for sentencing
 - e. 3rd Circuit training on effective use of technology in the courtroom

2. Attorneys seeking to renew placement in tier 4 shall repeat Assignment Committee approved CLEs applicable to subsection V, B, 1, b-e every three years before submitting a renewal application.
 3. Tier 4 professional experience requirements shall, at a minimum, include:
 - a. First or second chair two or more preliminary examination hearings in any Michigan court; and
 - b. First or second chair two or more felony jury trials in any Michigan Court
- C. Tier 3 (capital offenses and possession or intent to deliver 450 – 1000 grams of a schedule 1 or 2 controlled substance other than marijuana - MCL 333.7403(2)(a)(ii) and MCL 333.7401(2)(a)(ii)).
1. Attorneys shall complete Committee approved CLE course requirements applicable for tier 4.
 2. Professional experience requirements shall, at a minimum, include one of the following within 12 months preceding submission of a new or renewal application:
 - a. First or second chair two or more capital jury trials; or
 - b. First or second chair one capital and three non-capital jury trials; or
 - c. First chair four or more non-capital jury trials
- D. Tier 2 (CSC & Child Abuse)
1. Attorneys shall complete professional experience requirements for tier 3 for new or renewal applications.
 2. Attorneys not previously approved for tier 2 shall complete Assignment Committee - approved CLE courses applicable to the following practice areas within the 12 months preceding the submission of an application:
 - a. Examination and jury selection techniques unique to CSC and child abuse cases.
 - b. Sex Offender Registry Act
 - c. Other act and propensity evidence
 - d. DNA and *Daubert* issues
 - e. Michigan Rules of Evidence and effective direct and cross examination
 - f. Pre-trial motions practice
 - g. Collateral consequences for sentencing
 - h. Training on effective use of technology in the courtroom
 3. Attorneys seeking to renew tier 2 approval shall repeat three CLE courses applicable to subsections V, D, 2, a-h every three years before submitting a new or renewal application.

E. Tier 1 (Murder and Manslaughter)

1. Complete CLE training requirements for tier 3 and an Assignment Committee approved CLE course applicable to “trying murder cases” within the three years preceding submitting a new or renewal application.
2. Professional experience requirements shall require the applicant to first chair at least 15 adult felony jury trials to completion within the preceding five years of submitting a new or renewal application for tier 1.

F. Attorneys on the Assignment Roster shall be available to serve as a litigation mentor for less experienced attorneys seeking to develop professional experience as long as approved by the client.

VI. Appointments by Administrator’s Staff

- A. The following procedure of appointing counsel shall be initiated immediately after a determination that the defendant is eligible for indigent criminal defense services and the defendant’s arraignment on the warrant.
- B. Appointments to private practice attorneys for felony offenses shall be on a rotational basis from Assignment Roster(s) managed by the 3rd Judicial Circuit Court Administrator’s staff (Administrator). Staff assigned by the Administrator to implement this Order shall follow the procedures established by the Court.
- C. Upon receiving a request to appoint counsel, staff shall ensure the attorney is eligible and approved by the Criminal Assignment Committee to handle the appointment.
- D. Staff shall then ascertain the availability of the next attorney on the Assignment Roster. Attorneys shall accept the appointment(s) within 4 hours of attempted contact or the appointment is deemed declined. If accepted, staff shall immediately notify the district court for which the appointments were made.
- E. Attorneys who decline appointments are placed at the bottom of the rotational list and the availability of the next attorney on the roster shall be determined. The Administrator’s staff shall notify the Attorney Review Committee if attorneys repeatedly decline or are unavailable for assignments.
- F. Staff shall update and post the Assignment Rosters to assist assigned counsel to monitor their status for rotational assignments.
- G. Attorneys approved for tier 4 offenses shall receive three tier 4 appointments at a time. When practicable, these appointments shall be for cases in the same district court and scheduled on the same day. Staff shall ensure appointments do not create scheduling conflicts.

- H. Appointments for tier 1, 2 and 3 offenses shall occur in the same manner as tier 4 offenses except appointments shall be assigned one at a time.
- I. In order to ensure effective case management, the Chief Judge may issue a docket directive to change the number of appointments under this section.
- J. Assigned counsel is ineligible to continue representation when an offense is amended or added for which counsel is not tier approved. In these situations, the Court shall notify Trial Court Services which shall then appoint the next tier approved assigned counsel from the applicable Roster.
- K. To promote continuity in representation, defendants with pending cases in Wayne County charged with new felony offenses shall be appointed the same assigned counsel provided the attorney is approved to handle the new offense. Appointments made under this subsection shall not affect the attorney's position on the assignment roster.
- L. Private practice attorneys who accept appointments shall ensure other obligations do not negatively impact their clients' liberty interest. Therefore, private practice attorneys shall be ineligible to receive appointments if they represent four or more in-custody defendants at one time where trial has not been held within 91 days from the bind over at the preliminary examination.

VII. Probation Violators and Absconders from Bond Procedure

- A. The following procedure of assigning counsel is to be initiated as soon as the defendant is determined to be eligible for indigent criminal defense services.
- B. Probation violators and defendants accused of absconding from bond are frequently in-custody and require immediate representation. To protect an accused's liberty interest and provide immediate representation, the following appointment process shall be used:
 - 1. Unless otherwise designated in this section, appointments shall be on a rotational basis from a Probation and Absconder Assignment Roster managed by the Administrator's staff.
 - 2. Attorneys approved and eligible to serve under this Order shall also be approved to serve on this Roster provided counsel makes a written request to the Administrator.
 - 3. Attorneys appointed from this Roster shall serve one, 8-hour appointment as either "House Counsel," for an arraignment courtroom, or "Floor Counsel," for a group of trial courtrooms to represent probation violators and bond absconders subject to subsection C and D below.

C. Appointments for Probation Violators

1. When a probationer has not been appointed counsel for new felony charges in Wayne County, House or Floor Counsel shall be appointed for the violation.
2. Continuity in representation is a priority for the Court. Therefore, when a probationer has already been appointed counsel for new felony charges in Wayne County, the same attorney, not House or Floor Counsel, shall be appointed for the violation. The Court shall confirm the attorney is:
 - a. Tier approved to handle the offense for which the defendant is on probation; and
 - b. Available to represent the probationer at a violation hearing, if demanded, within 14 days of the arraignment on the violation.
3. When counsel is unavailable or ineligible to comply with subsection 2 a. or 2 b., Floor or House Counsel shall be appointed for the violation.
4. Floor or House Counsel may appear on behalf of the probationer to address bond if probationer's appointed counsel is unavailable to appear at the arraignment on the violation.
5. The Chief Judge may issue a docket directive limiting the number of appointments to assigned counsel under this section.

D. 3rd Circuit Appointments for Absconders from Bond

1. Consistent with MCR 2.117(C)(2), the Court shall contact defendant's counsel of record to determine whether counsel is available and eligible to continue representing defendant who has absconded while on bond.
2. Prior appointed counsel of record shall continue representing defendant, unless prior counsel is ineligible or unavailable to continue representation.
3. When counsel of record is unavailable to appear at defendant's capias arraignment, floor or house counsel shall be temporarily appointed to argue bond, after which time prior counsel shall resume representation.
4. If floor or house counsel is ineligible or otherwise cannot serve, permanent counsel shall be appointed by the Administrator consistent with Section VI of this Order.

- E. Attorneys scheduled to serve as house or floor counsel may not substitute another attorney to cover his or her obligation under this section unless advance written permission is given by the Administrator's staff. Administrative staff shall provide the Court and the Court Clerks with advance notice of any approved substitutions.

- F. If house or floor counsel fails to appear or is unreasonably late to court, the Court shall substitute house or floor counsel then serving in the Criminal Division to ensure indigent defendants receive timely representation.

VIII. District Court Appointment Procedure

- A. The following procedure of appointing counsel for felony offenders shall be initiated immediately following a determination that the defendant is eligible for indigent criminal defense services and the defendant's arraignment on the warrant.
- B. The 3rd Judicial Circuit Court Administrator's staff shall assign counsel for all felony offenders.
- C. When new or replacement counsel needs to be appointed, the district court shall notify the 3rd Judicial Circuit Court Administrator's staff who shall then appoint counsel on a rotational basis in accordance in section VI of this Order.
- D. The Chief Judge may issue a docket directive limiting the number of appointments to assigned counsel under this section.

IX. District Court Appointment Procedure in Exigent Circumstances

- A. The 3rd Judicial Circuit Court recognizes, however, situations will arise in district court where appointed counsel's appearance is immediately necessary to protect an in-custody defendant's liberty interest, e.g., arraignments for felony absconders or when assigned counsel fails to appear in court. When new or replacement counsel is immediately necessary, the district court shall notify the 3rd Judicial Circuit Court Administrator's staff who shall then appoint an attorney from a separate region-based district court attorney roster.
- B. Counsel approved to serve under this section shall be available to appear in district court within 30 minutes of attempted contact from the Administrator's staff or the assignment is deemed declined. Attorneys who decline or are unavailable for an appointment are placed at the bottom of the rotational list and the availability of the next attorney on the roster shall be determined.
- C. Counsel approved to handle tier 1, 2, 3 or 4 cases under this Order may also sign-up with the Administrator for not more than one region at a time. Applications to the Administrator shall include counsel's mobile telephone number.
- D. The Administrator's staff shall ensure attorneys are appointed for offenses for which they are tier approved and eligible.
- E. The district courts are encouraged to notify its representative on the Attorney Review Committee if assigned counsel fails to appear to court.

- F. Staff shall update and post the district court Attorney Assignment Rosters to assist counsel monitor their status for rotational assignments.
- G. This Order does not apply to the appointment of assigned counsel for indigent witnesses. See section X. B.
- H. The Chief Judge may issue a docket directive limiting the number of appointments to assigned counsel under this section.

X. Other Appointments

- A. The 3rd Judicial Circuit Court recognizes that the rotational system does not account for unique-or high-profile cases or defendants. In these limited situations, the Chief Judge or designee may appoint an attorney from the applicable roster to represent an indigent defendant outside of the rotational system.
- B. The 3rd Judicial Circuit Court further recognizes situations will arise where judges need to make an immediate appointment. For instance, situations where a witness at a proceeding unexpectedly asserts a 5th Amendment right not to testify and material witness detainer hearings require immediate representation and waiting for an appointment through the Administrator would create unreasonable delay to the court, jury, and the liberty interest of an in-custody witness. In these situations, the judge may appoint an approved tier 1, 2, 3 or 4 attorney to represent an indigent witness.

XI. Nature of Appointments and Substitutions

- A. Appointments are assigned to an attorney; not a firm, partnership or association of attorneys.
- B. Temporary substitutions for an appointed attorney are permitted only in emergency situations and with the consent of the client and judge. Substitutions shall be an attorney from the Roster applicable to the charged offense. Unauthorized or excessive substitutions of assigned attorneys undermine continuity of representation and shall be reported to the Chair of the Criminal Assignment Committee for possible action.
- C. Appointed counsel shall not allow another attorney to substitute for final conferences, evidentiary hearings or trials.
- D. Attorneys retained by indigent client after their appointment shall not submit payment vouchers to the Court for legal services after they were retained.
- E. Attorneys who accept an assignment for which they are tier ineligible or accept an appointment from a judge other than as provided for in this Administrative Order shall not be approved for payment.

XII. Suspension or Removal – Attorney Review Committee

- A. An Attorney Review Committee shall serve as a standing committee to make suspension and removal decisions from the Assignment Roster.
- B. Decisions to suspend or remove attorneys from an assignment roster frequently involve considering sensitive or confidential information. Therefore, to protect the privacy of attorneys on the roster, the Committee shall consist of only the four judges currently serving on the Criminal Assignment Committee and one district court judge selected by the President of the Wayne County District Court Judges' Association.
- C. Committee members shall serve a term expiring on December 31 and may be renewed at the discretion of the appointing authority. The Chief Judge or designee shall select the Committee Chair and the Committee shall meet not less than twice a year to consider counsels' continued participation in the assignment rosters.
- D. Suspension and removal decisions shall be made upon a majority vote of the Attorney Review Committee members present. If immediate action is necessary, the Chief Judge or designee shall temporarily suspend an attorney from further appointments and take other appropriate action.
- E. Attorneys on the Assignment Roster are required to notify the Chair of the Attorney Review Committee and the Presiding Judge of the Criminal Division of any charges, sanctions, suspension or discipline from the State Bar of Michigan. Failure to provide written notification within 7 days of such a finding may result in suspension or removal from the Assignment Roster.
- F. Attorneys on the Assignment Roster are required to notify the Chair of the Attorney Review Committee and the Presiding Judge of the Criminal Division of a finding by any trial or appellate court that their representation in a criminal case constituted ineffective assistance of counsel. Failure to provide written notification within 7 days of such a finding may result in suspension or removal from the Assignment Roster.
- G. Service on the Assignment Roster is a privilege and not a right. Attorneys sanctioned or removed from the assignment roster may seek review of the Committee's decision to the Presiding Judge of the Criminal Division in writing within 7 days of notice being sent to the applicant of the decision. A formal hearing is not required. The review decision by the Presiding Judge shall be in writing and is final.
- H. The Attorney Review Committee does not discriminate on the basis of race, age, color, religion, national origin, gender, sexual orientation, veteran status, or disability that materially impairs defendant's right to effective counsel.
- I. This Order does not limit the authority of a judge assigned to a case to sanction or remove an attorney.

XIII. Compensation

- A. The attorney must submit an electronic payment voucher to the Office of Budget and Finance indicating services rendered within 63 days after the disposition of each case. The attorney will be compensated pursuant to the 3rd Circuit Court's Appointed Attorney Fee Schedule. The fee schedule is available in the Trial Court Services Office and on Third Circuit Court's website.

XIV. Maintenance of Record

- A. The Circuit Court maintains the number of appointments assigned to each attorney and the number of appointments given to each attorney by the judge of the Court. The Court also maintains fiscal information related to the amount of funds paid to each attorney by the Court and for assignments by each judge of the Court.
- B. These records will be maintained by the court pursuant to SCAO General Schedule 16, *Record Retention Schedule for Michigan Trial Courts*.
- C. To protect the public's confidence in the integrity of the criminal assignment procedure, records shall be maintained by the Administrator and made available to the public upon request within a reasonable time. There will be no charge for the inspection of records; a reasonable fee will be charged for providing copies, pursuant to the Michigan Court Rules 8.119(J). The Circuit Court will annually report information regarding the appointment of counsel as required by MCR 8.123(F).

Dated: March 27, 2017



Hon. Robert J. Colombo, Jr., Chief Judge
Third Judicial Circuit of Michigan

Date Approved by SCAO: April 19, 2017