

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

In re Appointment of Counsel for
Indigent Parties

Administrative Order 2006-3

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This Administrative Order governs the selection, appointment, and compensation of counsel who represent indigent parties in the Macomb County Circuit Court pursuant to MCR 8.123.

I. The following Indigent Assignment Lists will be maintained:

A. Civil/Criminal Division Assignment List, with the following subdivisions:

1. Those who represent persons charged with capital offenses (potential sentences of imprisonment for life); 'A' level offenses.
2. Those who represent persons charged with major felony offenses (potential sentences of imprisonment in excess of five years to less than life); 'B' level offenses.
3. Those who represent persons charged with all other offenses for which counsel is to be appointed by law within the jurisdiction of the Circuit Court (potential sentences up to and including five years imprisonment); 'C' level offenses.

B. Family Division Assignment List

C. Juvenile Division Assignment List, with the following additional sub-lists:

1. Those who are willing to represent persons who need counsel for proceedings which occur on Saturdays.
2. Those who are willing to represent persons in parental by-pass matters.

II. Administration of the Appointed Counsel Program

The Chief Judge shall administer the appointed counsel program. The Civil/Criminal and Family Division Assignment Lists shall be maintained by a person or persons designated by the Circuit Court Administrator. The Juvenile Division Assignment List shall be maintained by a person or persons designated by the Juvenile Division Administrator.

III. Method of Selecting Attorneys for the Assignment Lists

- A. Indigent Assignment List Selection Committees shall be appointed by the Chief Judge as needed to maintain the assignment lists.
 - 1. The Civil/Criminal and Domestic Indigent Panel Committee shall be made up of two judges of the Macomb County Circuit Court and three members of the Macomb County Bar Association, nominated by the President of the Macomb County Bar Association.
 - 2. The Juvenile Division Indigent Panel Committee shall be made up of one judge, two Juvenile Division representatives, and three members of the Macomb County Bar Association, nominated by the President of the Macomb County Bar Association.
- B. Each Committee shall meet, as needed, to review the applications of attorneys applying to be appointed to an Indigent Assignment List or subdivision of a list and to determine their qualifications to be appointed.
- C. Attorneys wishing to be appointed to an Indigent Assignment List or subdivision of a list shall apply by filing an application at the Judicial Aide office.
- D. Attorneys shall be notified in writing of the action taken by a Committee.
- E. An attorney who is not appointed, following proper application, may appeal in writing to the Chief Judge within 30 days of mailing of the notice of the action of the Committee. There will be no oral argument. The Chief Judge shall inform the applicant of the decision in writing.

IV. Minimum Standards/Qualifications of Attorneys

- A. All attorneys applying to be appointed to an Indigent Assignment List must be members in good standing of the State Bar of Michigan and the Macomb County Bar Association.
- B. All applicants to the Civil/Criminal and Family Division Lists must have their principal office located in Macomb County. 'Principal office' shall be defined as the attorney's official address as currently maintained by the State Bar of Michigan.
- C. In order to be placed on an Indigent Assignment List, all attorneys must have attended a basic skills seminar on practicing law in Macomb County in the area of law relevant to the list to which the attorney seeks appointment.
- D. In order to remain on an Indigent Assignment List, attorneys must attend

continuing education programs consisting of at least one seminar or three mini-seminars per year covering the area of law relevant to the list or lists to which the attorney is appointed.

- E. The continuing education requirements in paragraph (B) and (C) of this section may be satisfied by documentation of attendance at relevant seminars through the Macomb County Bar Association, the Institute for Continuing Legal Education, Oakland County Bar Association or other organization offering recognized continuing legal education.
- F. Appointments to cases are to the individual appointed; not to a firm, partnership or association of attorneys. Substitution of another attorney is not permitted unless in emergency situations and with the consent of the judge or judicial officer assigned to the case. In the event a substitution is necessary, it is the responsibility of the assigned attorney, not the Court staff, to find a substitute. If a substitution is approved, the substituting attorney must be prepared at any proceedings on the case. Failure to comply may result in the removal of the appointed attorney from the applicable list and the appointment of replacement counsel. The substituting attorney may be sanctioned, as well, if appropriate. Any proposed substitute must be an attorney on the appropriate list.
- G. Attorneys shall appear on time for all hearings and trials. If an attorney is delayed by an emergency, the assigned judge or judicial officer must be notified. Failure to appear on time without good cause may result in a sanction(s) or discipline, including removal from the case, appointment of substitute counsel and/or removal from the appropriate list or lists.
- H. Attorneys must contact their clients prior to all hearings and trials and must direct them to be present on all required occasions. Attorneys must dress appropriately for all court proceedings and must advise their clients to also dress appropriately.
- I. Qualifications for the Civil/Criminal Division List
 1. Attorneys applying to be counsel in 'A' level capital cases must have current and extensive experience in representing individuals in major felony and capital criminal cases, including experience in the Macomb County Circuit Court. They must have shown competence and diligence in their representation of parties in prior cases.
 2. Attorneys applying to be counsel in 'B' level major felony cases must have current and substantial experience in representing individuals charged with offenses with a potential sentence in excess of five years, including experience in representing individuals in these cases in the Macomb County Circuit Court. They must have shown competence and diligence

in their representation of parties in these prior cases.

3. Attorneys applying to be counsel in 'C' level cases with a potential sentence less than five years must have sufficient knowledge and ability to represent indigent parties in these cases with competence and diligence.

J. Qualifications for the Family Division List

Attorneys applying to be counsel in domestic relations cases within the Family Division must have substantial and relevant experience in representing individuals in domestic relations proceedings for which counsel must be appointed by law, including experience in the Macomb County Circuit Court. They must have shown competence and diligence in the cases in which they have appeared.

K. Qualifications for the Juvenile Division List

Attorneys applying to be counsel in Juvenile Division cases must have substantial and relevant experience representing individuals in juvenile matters, including experience in the Macomb County Circuit Court. They must have shown competence and diligence in the cases in which they have appeared.

Attorneys appointed to represent children in protective proceedings must interview children, consult with case workers and foster parents, and comply with all provisions of MCL 712A(c)(7); MCL 712A.17(c)(7) and MCR 3.915.

V. Process for Appointment of Counsel to Cases

- A. When practical, counsel for indigent parties in the Macomb County Circuit Court shall be appointed in rotation from the appropriate Indigent Assignment List.
- B. In exigent circumstances, a judge may appoint counsel to represent an indigent party immediately. To the extent feasible, a judge shall appoint counsel from the appropriate Indigent Assignment List.
- C. In criminal cases, persons seeking appointment of counsel on their behalf shall make application on a form provided by the person or persons maintaining the lists and shall provide adequate information to demonstrate their indigence. Judicial Aide shall appoint counsel after receiving an application and determining indigence.
- D. In domestic relations cases, parties shall make application on a form provided by the person or persons maintaining the list and provide adequate information to demonstrate their indigence. The judge assigned to the case shall appoint counsel after receiving an application and determining indigence.

- E. In Juvenile Division matters, counsel shall be appointed when required by law. Otherwise, parties seeking appointment of counsel shall make application on a form provided by the Juvenile Division to the person designated to receive applications by the Juvenile Division Administrator. Counsel shall be promptly appointed after receiving the application and determining indigence.

VI. Repayment of Appointed Counsel Costs

Parties for whom counsel has been appointed must reimburse Macomb County for the costs incurred on their behalf. Collection action will take into account ability to pay.

VII. Compensation of Counsel

- A. Indigent Fee Schedules shall be adopted for the compensation of attorneys appointed to represent indigent parties in the Macomb County Circuit Court and approved by the Chief Judge. The Indigent Fee Schedules shall compensate counsel on a case segment or hourly basis. The Indigent Fee Schedules shall be reviewed by the Chief Judge periodically.
- B. In criminal cases, counsel shall submit a billing to Judicial Aide at least two weeks prior to sentencing and shall include the normal fee for sentencing. A supplemental billing may be submitted should there be additional work performed. In civil and domestic relations cases, counsel shall submit billings at the conclusion of their service.
- C. In Juvenile Division cases, counsel shall submit billings at least two weeks prior to the disposition hearing and shall include the normal fee for disposition. A supplemental billing may be submitted should there be additional work performed. In other Juvenile Division cases, counsel shall submit billings at the conclusion of their service.
- D. Billings shall be submitted on the current version of the Macomb County Circuit Court Request for Payment of Court Appointed Attorney fees form (for the particular subject area) and include the information required by that form. Billings without the information will be returned for correction. Forms may be obtained from Judicial Aide or downloaded from the Court's Web site.

VII. Reviewing Performance, Sanctioning and Removing Counsel from Lists

- A. The performance of counsel will be reviewed by each Committee. In addition, each Committee may require any or all members of the list it reviews to reapply and demonstrate continued qualification to serve on the list.

- B. Complaints about appointed counsel shall be made to the appropriate Committee. The Committee shall evaluate the complaint and take the action it deems appropriate.
- C. An attorney may be sanctioned, suspended, or removed from a list or lists for violation of the terms of this Order, incompetency, lack of diligence, consistent unavailability to serve, violation of Court policies, or other good cause.
- D. When immediate action is necessary, the office or person maintaining the list may suspend an attorney from further appointments pending a review of the circumstances by the appropriate Committee.
- E. This Order does not limit the authority of the judge or judicial officer assigned to the case to sanction, remove, or replace an attorney.

IX. Appeal

- A. An attorney who is denied an appointment or upgrade, or who is sanctioned, suspended or removed from a list by a Committee may seek review of the decision by the Chief Judge in writing within 30 days of the decision. There will be no hearing allowed. The Chief Judge shall make a decision in writing.
- B. An attorney who is sanctioned by a judge or judicial officer may seek relief allowed by law. He or she may not seek review by the Chief Judge under this section.

X. Maintenance of Records

- A. The Court shall compile an annual report of the information required by MCR 8.123(D) at the end of each calendar year.
- B. The annual report or reports will be available for inspection by the public, without charge, at the office of the Circuit Court Administrator within normal business hours. A person seeking access to the reports must provide identification and may only review the reports in the lobby of the Circuit Court Administrator's Office under the reasonable supervision of staff to safeguard the contents of the reports.
- C. A person may receive a copy of an annual report or reports upon the payment of a reasonable fee in accordance with the Court's Local Administrative Order pursuant to MCR 8.119(E).
- D. Records will be maintained pursuant to Schedule 16.

XI. This order repeals Local Administrative Order 2003-7.

This order shall take effect on September 25, 2006

September 18, 2006
Dated

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Antonio P. Viviano,
Chief Judge