

STATE OF MICHIGAN

IN THE 16TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF MACOMB

In re: Appointment of Counsel for Indigent
Parties in Domestic and Juvenile Matters

16th Judicial Circuit Court Administrative Order #2020-06
Rescinds Local Administrative Order 2014-1

This Administrative Order governs the selection, appointment, and compensation of counsel who represent indigent parties in the 16th Judicial Circuit Court on non-criminal matters.

I. The following Indigent Assignment Lists will be maintained:

A. Family Division Assignment List

Those who are willing to represent individuals in domestic relations proceedings where counsel needs to be appointed by law.

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

- i. Those who are willing to represent persons in:
- ii. Saturday on-call proceedings
- iii. Parental bypass matters
- iv. Neglect proceedings
- v. Delinquency proceedings
- vi. Appellate proceedings

C. The Chief Judge may create additional assignment lists or additional categories within any of the existing lists after consultation with the Macomb County Bar Association or Bar Association Committee identified in Section III (A) of this Order.

II. Administration of the Appointed Counsel Program

The Chief Judge shall administer the appointed counsel program. The assignment lists created pursuant to this Order shall be maintained by a person or persons designated by the Circuit Court Administrator.

III. Method of Selecting Attorneys for the Assignment Lists

- A. An Indigent Panel Committee shall be appointed by the Chief Judge as needed to make appointments to the lists. The Indigent Panel Committee shall be made up of one judge of the 16th Judicial Circuit Court, two Juvenile Division representatives,

and three members of the Macomb County Bar Association, nominated by the President of the Macomb County Bar Association. The Committee shall be convened and the business of the Committee managed by an *ex officio* non-voting member appointed by the Chief Judge.

- B. The Committee shall meet at least annually, or more often as needed, to review the applications of attorneys applying to be appointed to an Indigent Assignment List or a sub-list to determine their qualifications to be appointed. The Committee shall also review complaints regarding attorneys on the lists and take action as needed.
- C. Attorneys wishing to be appointed to an Indigent Assignment List or a sub-list shall apply by filing an application with Court Administration. Applications are available at Court Administration or on the Court's website.
- D. Attorneys shall be notified in writing of the action taken by a Committee.
- E. An attorney whose application is denied by the Committee may appeal in writing to the Chief Judge within thirty (30) days of mailing of the notice of the action of the Committee. The appeal should be in writing and may be in letter format. Exhibits supporting the appellant's position may be attached. There will be no oral argument. The Chief Judge shall inform the applicant of the decision in writing.

IV. General Rules

- 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. Attorneys on the lists must either (1) have their principal office located in Macomb County; (2) reside in Macomb County; or (3) conduct a substantial portion of their practice in Macomb County. "Principal Office" shall be defined as the attorney's physical business office. "Substantial Portion of their Practice" means that the attorney devoted at least 1/3 of his or her practice to clients in Macomb County in the preceding year, and this may be established by affidavit.
- C. Applicants must notify Court Administration of any address updates.
- D. In order to be placed on an Indigent Assignment List, all attorneys must have fulfilled all training requirements and any other requirements as established by the Committee and set forth in all application materials, in addition to fulfilling all of the requirements set forth in this Local Administrative Order.
- E. By way of example, the Committee may choose to require that the continuing education requirements of this section be satisfied by documentation of attendance at relevant seminars through the Macomb County Bar Association, the Institute for Continuing Legal Education, or other organizations offering recognized continuing

legal education. Documentation of attendance shall be provided to the Macomb County Bar Association. If there is a disagreement as to whether particular education program should be recognized, the decision of the Chief Judge shall be final.

V. Nature of Appointments and Substitutions

- A. Appointments to cases are to the individual appointed; not a firm, partnership or association of attorneys.
- B. The temporary substitution of another attorney to cover the appointed attorney is not permitted unless in emergency situations and with the consent of the judge or quasi-judicial officer assigned the case. Any proposed substitute must be an attorney on the appropriate list. If excessive substitutions are noticed by the Court, it will be reported to the appropriate committee for further investigation and possible action as detailed in Section X.
- C. If consent is granted, 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.
- D. Attorneys shall appear on time for all hearings and trials. If an attorney is delayed by an emergency, the assigned judge or quasi-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(s).
- E. Attorneys must contact their clients prior to all hearings and trials and must direct them to be present on all required occasions.
- F. Attorneys must dress appropriately for all court proceedings and must advise their clients to also dress appropriately.

VI. Qualifications

A. 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. They must have shown competence and diligence in the cases in which they have appeared.

B. Qualifications for the Juvenile Division List

Attorneys applying to be counsel in Juvenile Division cases must have relevant experience in representing individuals in juvenile matters. 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 MCR 3.915.

- i. Attorneys must be admitted to the State Bar of Michigan for a minimum of one (1) year before receiving case assignments on Delinquency proceedings. The one (1) year requirement may be waived – in the discretion of the Committee – if the applicant can establish that he or she has observed proceedings at the 16th Judicial Circuit Court's Juvenile Division including a diversion introduction, preliminary hearing, plea, disposition, and review hearing.
- ii. Attorneys must have successfully handled cases for one (1) year in neglect law or participated in the Court's mentorship program before they are eligible for the neglect list. The parameters of the mentorship program will be established by the Committee, but will include, at a minimum:
 - a. Observing the following neglect proceedings: preliminary hearing, plea, disposition, trial, PPH/review, and post-termination review;
 - b. Receiving a referral to an approved mentor attorney to serve as a resource to be consulted for one year after being placed on the neglect list; and
 - c. Requiring that attorneys designated as mentors have practiced in the area of neglect for five (5) years and have been approved as mentors by the Committee or the Chief Judge.

C. Qualification for Saturday Appointments: An attorney must be on the delinquency and neglect lists prior to being placed in the rotation for Saturday appointments.

VII. Process for Appointment of Counsel to Cases

- A. All appointments from the Indigent Assignment Lists shall be by rotation. The Court staff assigned to contact attorneys shall follow the procedures established by the Court.
- B. The Chief Judge, in an unusual, appropriate situation where the best interests of justice would be served by such action, may appoint counsel out of rotation from the Indigent Assignment List or may appoint counsel not presently on the list. Reasons for such action shall be stated either on the record or in the order appointing counsel.
- C. In exigent circumstances, a judicial officer may appoint counsel, on the record or in an order, to represent an indigent party immediately when it serves the interests

of justice and it is not practical to delay proceedings in order to appoint from the appropriate Indigent Assignment List.

- D. Persons seeking appointment of counsel shall make application on a form provided by Court Administration and shall provide adequate financial and personal information to demonstrate their indigence. The Chief Judge shall appoint counsel after receiving an application and determining indigence.

VIII. Compensation of Counsel

- A. Indigent Fee Schedules shall be adopted for the compensation of attorneys appointed to represent indigent parties in the 16th Judicial 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 domestic relations cases, counsel shall submit a Request for Payment at the conclusion of their service.
- C. In juvenile cases, counsel shall submit Request for Payment immediately following the disposition hearing. A supplemental Request for Payment may be submitted should there be additional work performed. In Diversion cases, counsel shall submit Request for Payment at the conclusion of their service.
- D. Request for Payment 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. Request for Payment without the information will be returned for correction. Forms may be obtained from Court Administration or downloaded from the Court's website. Other formats will not be accepted. Copies of Orders of Substitution, if any, must be included with all Requests for Payment. Court Administration will direct how the completed forms should be submitted.
- E. Extraordinary Services
 - i. Fees above and beyond the normal fee schedule may be authorized for extraordinary services. "Extraordinary services" means services above and beyond the ordinary that are reasonable. The attorney must include an itemization of services performed.
 - ii. Requests for payment of extraordinary services must be submitted to Judicial Aide (on domestic cases) or Reimbursement (on juvenile cases) for a recommendation. Court Administration will then forward the request, along with the recommendation, to the judge or referee assigned to the case. The assigned judge or referee will then determine whether to authorize payment for extraordinary services.

IX. Reviewing Performance, Sanctioning and Removing Counsel from Lists

- A. The performance of counsel will be reviewed by each Committee when concerns about performance are brought to the Committee's attention. 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 may be made to Court Administration. The complaints will then be referred to the Committee for further action. If immediate action appears to be necessary, Court Administration will forward the complaint to the Chief Judge.
- C. An Attorney may be sanctioned, suspended, or removed from a list or lists by the Chief Judge at any time 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. An assigned judge or referee may sanction, remove, or replace an attorney on a case pending before that assigned judge or referee at any time.
- E. Failure to immediately notify of a sanction, suspension or discipline from the State Bar of Michigan will result in removal from the list(s).

X. Appeal

- A. An attorney who is denied an appointment or upgrade or who is sanctioned, suspended or removed from a list by the Committee may seek review of the decision by the Chief Judge in writing within thirty (30) days of the decision. A hearing need not be allowed. The Chief Judge shall make a decision in writing or on the record.
- B. An attorney who is sanctioned by a judge or referee assigned to a case may seek relief allowed by law. He or she may not seek review by the Chief Judge under this section.
- C. In the event an attorney wants to appeal a reduction in their Request for Payment or Extraordinary Services within thirty (30) days of the decision, they may appeal in writing to the Chief Judge, and there will be no oral arguments. A decision by the Chief Judge will be given in writing.

XI. Appellate Appointments

Attorneys are appointed to work on criminal appeals under the rules of the Michigan Appellate Assigned Counsel System (MAACS). Request for payment for work on appeals are to be submitted on the forms supplied by the Michigan Appellate Assigned Counsel

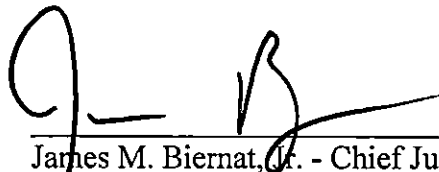
System. Attorneys are compensated in accordance with the policies promulgated by MAACS.

XII. 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.

This Order shall take effect upon approval by the State Court Administrative Office.

Date: *August 3, 2020*



James M. Biernat, Jr. - Chief Judge
16th Judicial Circuit Court, Macomb County
Probate and 42nd District Courts