

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

In re: Appointment of Counsel
for Indigent Parties

Administrative Order 2010 – 1

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. Local Administrative Order 2008-1 is rescinded.

- I. The following indigent Assignment Lists will be maintained:
 - A. Civil/Criminal Division assignment list, with the following sub-lists:
 - i. “A” level – Those who represent persons charged with capital offenses with a potential sentence of imprisonment for life.
 - ii. “B” level – Those who represent persons charged with major felony offenses with a potential sentence of imprisonment more than five years to less than life.
 - iii. “C” level – Assignments with a potential sentence up to and including five years imprisonment.
 - B. Family Division Assignment List

Those who are willing to represent individuals in domestic relations proceedings where counsel needs to be appointed by law.
 - C. Juvenile Division Assignment List, with the following sub-lists:
Those who are willing to represent persons in:
 - i. Saturday on-call proceedings
 - ii. Parental by-pass matters
 - iii. Neglect proceedings
 - iv. Delinquent protective proceedings
 - v. Appellate proceedings
 - vi. Diversion cases
 - D. 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. Indigent Assignment List selection committees shall be appointed by the Chief Judge as needed to make appointments to the lists.
 - i. 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.
 - ii. The Juvenile Division Indigent Panel Committee shall be made up of one judge of the Macomb County 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.
- B. Each Committee shall meet, 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.
- C. Attorneys wishing to be appointed to an Indigent Assignment List or a sub-list shall apply by filing an application at the Judicial Aide Office. Applications are available in Judicial Aide or on the Court's website.
- 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. 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 Civil/Criminal list must have their principal office located in Macomb County. "Principal Office" shall be defined as the attorney's physical business office. Attorneys who do not have an actual business office may apply through the Office of Judicial Aide for consideration. They will be considered on a case by case basis. If denied selection for appointment to an Indigent

Assignment List based upon the "Principal Office" requirements; a written appeal may be made to the Chief Judge.

- C. Applicants must notify Judicial Aide of any address updates.
- D. 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.
 - i. Civil/Criminal applicants must attend the basic law seminar offered by the Macomb County Bar Association.
 - ii. Juvenile applicants must attend the neglect/abuse and delinquency seminar offered by the Macomb County Bar Association.
 - iii. Domestic applicants must attend a basic skills seminar on domestic law offered by ICLE, Oakland County, or other accredited program.
- E. 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.
- F. The continuing education requirements 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. Documentation of attendance must be provided to the Macomb County Bar Association. If there is a disagreement as to whether particular education 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 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 XI.
- 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 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 Civil/Criminal Division List

- i. 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.
- ii. 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 the Macomb County Circuit Court. They must have shown competence and diligence in their representation of parties in prior cases.
- iii. 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.

B. 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.

C. Qualifications for the Juvenile Division List

Attorneys applying to be counsel in juvenile division cases must have substantial and relevant experience in 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 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.
- ii. Attorneys must have successfully handled cases for three (3) years in Delinquency proceedings before receiving case assignments in Neglect proceedings.
- iii. Attorneys must have successfully handled cases for a minimum of (5) years in Neglect proceedings and represented **both** parents and children before receiving case assignments in Appellate proceedings, Saturday On-Call assignments, Parental By-Pass matters, or Diversion cases.

D. Qualifications for the Diversion Assignment List

Attorneys applying to be counsel in juvenile diversion cases within the Family Division must have substantial and relevant experience in representing individual(s) 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.

- i. Attorneys must have successfully handled cases in Neglect proceedings for a minimum of (5) years and represented **both** parents and children before receiving case assignments on the Diversion Assignment List.
- ii. Approval must be given by the a designee appointed by the Chief Judge.
- iii. Applicants must observe at least three (3) sessions conducted by a current Diversion attorney.

VII. Process for Appointment of Counsel to Cases

- A. All appointments from the Indigent Assignment Lists shall be by rotation. The 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 a 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. In criminal and domestic cases, persons seeking appointment of counsel on their behalf shall make application on a form provided by Judicial Aide 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.
- E. In Juvenile Division matters, counsel shall be appointed when required by law. Otherwise, persons seeking appointment of counsel on their behalf shall make application on a form provided by Judicial Aide 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. Repayment of Appointed Counsel Costs

Individuals 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.

IX. 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 Request for Payment at least two weeks prior to the sentencing and shall include the normal fee for said hearing. A supplemental Request for Payment may be submitted should there be additional work performed.
- C. In civil, domestic relations and appellate cases, counsel shall submit a Request for Payment at the conclusion of their service.
- D. 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.
- E. 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 Judicial Aide or downloaded from the

Court's website. Other formats will not be accepted. Copies of Orders of Appointment and Orders of Substitution, if any, must be included with all Requests for Payment.

- F. In the event a sentence is deferred for six (6) months or more or in the event the defendant absconds while on bond, an attorney may submit an interim Request for Payment (must be clearly marked "interim").
- G. Attorneys who fail to comply with the Request for Payment deadlines may, as determined by the Chief Judge or his/her designee, have their compensation per case submitted reduced as follows:
 - i. If a Request for Payment is received by Judicial Aide after the date the Request is due under this Order, but less than one year after the date it is due, compensation shall be reduced by 20%;
 - ii. If a Request for Payment is received one year or more after the due date, but less than three years after the due date, compensation shall be reduced by a total of 50%; and,
 - iii. If a Request for Payment is received three years or more after the due date, the attorney shall not be compensated.
- H. If counsel is appointed to represent a defendant in more than one case and counsel performs simultaneous services on two cases or more, payment is as follows:
 - i. 1st case - The full amount of the fee requested, if approved, is paid.
 - ii. 2nd case - The amount of the fee requested is reduced by 50%.
 - iii. 3rd case - The amount of the fee requested is reduced by 75%.
 - iv. 4th case or more - No additional compensation is paid.

Separate Request for Payment forms are to be prepared for each simultaneous case number, with a copy of the Order Appointing and the box checked as to each simultaneous case (i.e. 2nd, 3rd).

I. Extraordinary Services

- i. Fees above and beyond the normal fee schedule are paid only for "extraordinary" services. This contemplates efforts clearly above and beyond the ordinary that are reasonably necessary in defense of the individual. The attorney must include an itemization of services performed.
- ii. Requests for payment of extraordinary services must be submitted to Judicial Aide for review and decision as to the amount, if any, appropriate under the circumstances. If Judicial Aide denies a request or approves less than the amount requested, it shall notify the attorney in writing.
- iii. An attorney aggrieved by a decision of Judicial Aide on extraordinary services may seek review by the judge assigned to the case. The attorney

shall include Judicial Aide's written decision as part of the request for review.

X. 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 Chief Judicial Aide. If immediate action is not necessary, the Chief Judicial Aide shall forward complaints to the appropriate Committee. The Committee shall evaluate the complaint and take the action it deems appropriate. If immediate action is necessary, the Chief Judicial Aide can temporarily suspend an attorney from further appointments and/or take other action appropriate to the circumstances. The Chief Judicial Aide shall submit the circumstances to the Committee for evaluation and appropriate action within a reasonable time.
- C. An Attorney may be sanctioned, suspended, or removed from a list or lists by the Chief Judge at any time, with or without input from the Committee, 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. This Order does not limit the authority of the judge or judicial officer assigned to a case to sanction, remove, or replace an attorney.
- E. Failure to immediately notify the Court, through notification to the Judicial Aide, of a sanction, suspension or discipline from the State Bar of Michigan will result in removal from the list(s).

XI. Appeal

- A. An attorney who is denied an appointment or upgrade or who is sanctioned, suspended or removed from a list by a committee or the Chief Judicial Aide may seek review of the decision by the Chief Judge in writing within 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 judicial officer 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 30 days of the decision, they may appeal in writing to the Chief Judge, there will be no oral arguments. A decision by the Chief Judge will be given in writing.

XII. Appellate Appointments

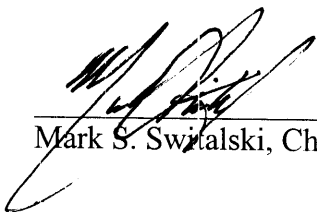
Attorneys are appointed to work on criminal appeals under the rules of the Michigan Appellate Assigned Counsel System (MAACS). Request for payment for work on appeals are to be submitted on the forms supplied by the Michigan Appellate Assigned Counsel System. Attorneys are compensated at an hourly rate established by the Chief Judge. Attorneys are compensated for travel time at the hourly rate instead of mileage. Do not submit Request for Payment for mileage.

XIII. 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.

XIV. This order repeals Local Administrative Order 2008-1.

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



Mark S. Switalski, Chief Judge

Dated: *2-18-10*