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**ADMINISTRATIVE ORDER 1998-7**

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STATE OF MICHIGAN  
THIRD JUDICIAL CIRCUIT

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**SUBJECT:**      Assignment of Lawyers in the Representation of Indigent Defendants in the Criminal Division\*

Pursuant to MCR 6.005(I), the following administrative order is adopted in the Third Judicial Circuit to govern the selection and assignment of lawyers for representation of indigent (as defined in Section I) defendants in felony cases in the Criminal Division. Additionally, only those attorneys certified by the Detroit-Wayne County Criminal Advocacy Program (CAP) and are members in good standing of the State Bar of Michigan, shall be eligible for assignment as indigent counsel as follows:

**I. Indigency**

Indigent persons shall be eligible for the assignment of representation when it is indicated by affidavit that they are unable to afford representation in criminal matters which may result in their imprisonment. Persons subsequently found to be financially able to afford representation shall be subject to reimbursing the Court for services provided, including collection activities.

**II. Assignment of Counsel - Arraignment on Information (AOI) House Counsel System<sup>1</sup>**

- A. A capital (maximum sentence of life) list and a non-capital list will be maintained by the Chief Judge for assignment as house counsel.
- B. Spot assignments in AOI courtrooms shall be made from the appropriate capital and non-capital house counsel availability lists.
- C. One month prior to each calendar quarter, a notice will be posted informing attorneys that they may appear at the Attorney Assignment Office (Frank Murphy Hall of Justice) to sign up for house counsel assignments. The notice will allow one week for attorneys to sign up for a maximum of 10 days per month on the non-capital list or for any number of days on the capital list. Attorneys are encouraged to sign up for an entire given week if possible.
- D. Attorneys will provide specific dates when they know with relative certainty that they will be available. The attorney may, if qualified, apply for assignment on both the capital and non-capital lists. An attorney on both availability lists, may not apply for assignment to capital and non-capital cases on the same date. Sign-up dates will be entered into the computer. AOI judges will make assignments from this list, which will be known as the "AOI list."

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<sup>1</sup> The current listing of AOI judges appears in Schedule A.

- E. The AOI list will be provided to the AOI judges two weeks before the beginning of the next calendar quarter. The AOI judges will assign attorneys from the AOI list to serve as house counsel in their respective AOI courtrooms during the next calendar quarter.
- F. The AOI judges will make their assignments and return the completed assignment list to the Attorney Assignment Office within seven (7) days of the date they receive the AOI list. After the assignments have been completed, an AOI house counsel calendar will be sent to each AOI judge and will be posted on the Attorney's Bulletin Board at the Administration Office and in the Lawyer's Lounge on the third floor (Frank Murphy Hall of Justice).
- G. AOI judges may make no more than five (5) house counsel assignments per lawyer per quarter. If an attorney previously assigned per II(D) cannot appear on any or all of the days assigned as house counsel, the AOI judge shall request that the Chief Judge reassign (substitution) an attorney selected by the AOI judge. This reassignment is subject to the limitations of this section.
- H. Attorneys serving as house counsel in an AOI courtroom will represent all probation violators, defendants arrested on a *capias*, and will replace any attorney who withdraws from a case or fails to appear. House counsel will also serve as the replacement attorney when an AOI judge grants a defendant's request for new counsel.

### III. Trial Judge Assignment System<sup>2</sup>

- A. Trial judges may make no more than eight (8) assignments to any attorney during a two-week assignment rotation. Assignments include both 36<sup>th</sup> and out-county district court cases. The order of rotation will be based on seniority. The case list for rotating judges will be provided by administration. Any exceptions to the order of rotation may be permitted at the discretion of the Chief Judge.
- B. A judge may not assign more than 52 probation violation cases per calendar year to any given attorney.
- C. In those cases where one defendant has several cases, the assignment will be packaged as one case and reassigned by the Presiding Judge per Section V(B).

### IV. Other Assignments

#### A. Removal/Replacement of Counsel

If a defendant demands that his/her appointed attorney be replaced, or if the attorney is otherwise removed, the Third Circuit judge before whom the defendant is appearing may

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<sup>2</sup> The current Criminal Division trial judges appear in Schedule B.

assign an alternate attorney. A report regarding removal requests will be generated monthly for the Standing Assignment Review Committee (See X - Standing Assignment Review Committee) and the Criminal Division bench regarding all such assignments. Replacement assignments will be monitored by the Standing Assignment Review Committee and the Chief Judge.

- B. Assignments will be made by members of the Criminal Division only, or other Third Circuit judges designated by the Chief Judge. No visiting judge will make assignments.
- C. The current house counsel system for spot assignments at preliminary examinations in the 36<sup>th</sup> District Court shall be continued.

#### V. Presiding Judge Assignments

- A. The Presiding Judge will assign an attorney from the appropriate list for a defendant in an out-county district court, after originally informing the court that he/she planned to retain counsel, subsequently appears at a preliminary examination and requests an appointed attorney. The same procedure is to be followed if an assigned attorney fails to appear at a preliminary examination in an out-county district court.
- B. Assignments made as a result of case packaging are to be counted as case packaging assignments and will be reassigned by the Presiding Judge. These cases do not count for purposes of regular assignment of cases.
- C. Assignments made in diversion cases are to be counted as diversion assignments. No attorney is to receive more than four (4) diversion assignments in any one quarter. These cases do not count for purposes of regular assignment of cases.
- D. Assignments made to the Legal Aid and Defenders Association Office are to be counted as Defender's assignments.
- E. When the Presiding Judge is on the regular assignment rotation, the same eight (8) assignments per attorney limit that applies to all of the judges also applies to the Presiding Judge.

#### VI. Assignment Conflicts

An attorney who is assigned to represent a defendant in an open case shall be assigned all subsequent new cases. Such assignments will be counted as case packaging assignments.

#### VII. Conflict of Interest

A judge may not assign an attorney with whom:

- a. The judge was a partner of the attorney or a member of the same law firm as the

assigned attorney within the preceding two years, or

- b. The judge is the attorney's spouse, parent or child, a person within the third degree of relationship to the attorney, or has a relationship with an attorney which creates an appearance of impropriety or partiality.

#### VIII. Monitoring Reports

- A. AOI judges will receive a quarterly report showing the number of house counsel assignments (days), year-to-date, received by each attorney. If the number of assignments received by an attorney reaches four (4) during a given quarter, an Exception Report will immediately be generated and forwarded for review to the Chief Judge, the assigning AOI judge, and the committee members. The purpose of the Exception Report is to give the judge notice when attorneys are approaching the limit of assignable cases.
- B. Each trial judge will receive a printout every six (6) months listing the probation violation assignments (cases) he/she made to each attorney. An Exception Report will be generated and forwarded for review to the Chief Judge and the Standing Assignment Review Committee whenever a judge reaches 20 such assignments per each six month period. The purpose of the Exception Report is to give the judge notice when attorneys are approaching the limit of assignable cases.
- C. A judge on assignment rotation will receive a daily printout during the judge's rotation, showing the number of assignments made by the judge to each attorney with year-to-date totals for each attorney.

#### IX. Compliance

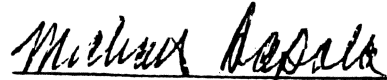
The Chief Judge will review the monitoring reports and notify any judge (AOI and trial) who approaches assignment limits. Any judge exceeding the assignment limit, will be removed from the assignment rotation. A judge so removed may be returned to the rotation at the discretion of the Chief Judge. If an AOI judge exceeds the assignment limits for house counsel, that AOI judge shall be removed from the assignment rotation and shall lose his/her ability to assign house counsel and shall repose that ability to the Chief Judge or a judge designated by the Chief Judge. An AOI judge so removed may be returned to the rotation at the discretion of the Chief Judge.

#### X. Standing Assignment Review Committee

A Standing Assignment Review Committee will be appointed by the Chief Judge with the charge to monitor all assignments. The Committee shall ensure that no limits or policies set in the above recommendations are exceeded or violated and shall recommend to the Chief Judge any changes in the assignment system the Committee deems necessary.

XI. Payment for Assignments

- A. Vouchers for payment for services rendered shall be submitted to Attorney Assignment Office (FMHJ) no later than thirty (30) days after disposition of each case. Vouchers for payment must be in conformance with Court requirements.
- B. Attorneys may petition the Chief Judge for payment of extraordinary fees.



Michael F. Sapala, Chief Judge  
Third Judicial Circuit

Effective: April 20, 1998

\* Sections II and VIII of this Plan shall become effective July 1, 1998. Sections III, IV, V, VI, VII, IX, X and XI shall become effective April 20, 1998.

**Prior to July 1, 1998, an AOI judge shall not assign more than three (3) probation violation cases per week to any single attorney and not more than two (2) assignments per month to any single attorney who replaces another attorney in an AOI courtroom.**

Schedule A - AOI Judges

Hon. Richard P. Hathaway	Track B	Hon. Robert L. Evans	Track D
Hon. Amy P. Hathaway	Track B	Hon. Vera Massey Jones	Track E
Hon. Judge Margie R. Braxton	Track B	Hon. William Leo Cahalan	Track F
Hon. John P. O'Brien	Track C		

Schedule B - Trial Judges

Hon. Terrance K. Boyle

Hon. Thomas E. Jackson

Hon. James R. Chylinski

Hon. Timothy M. Kenny

Hon. Jeffrey G. Collins

Hon. Warfield Moore, Jr.

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Hon. Sean F. Cox

Hon. Bruce U. Morrow

Hon. George W. Crockett, III

Hon. Craig Strong

Hon. Gershwin A. Drain

Hon. Harvey F. Tennen

Hon. Maggie Drake

Hon. Deborah A. Thomas

Hon. Prentis Edwards

Hon. Leonard Townsend

Hon. Geraldine Bledsoe Ford

Hon. Mary M. Waterstone

Hon. Cynthia Gray Hathaway

Hon. Kym L. Worthy

Hon. Diane Marie Hathaway

Hon. Carole F. Youngblood

Hon. Karen Fort Hood

Hon. Brian K. Zahra