

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT

SUBJECT: Assignment of Counsel 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 Court Criminal Division to govern the selection and assignment of lawyers for representation of indigent (as defined in Section I) defendants in felony cases. Only those attorneys certified by the Detroit-Wayne County Criminal Advocacy Program (CAP) and who 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 System¹

- 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. Approximately six weeks prior to each calendar quarter, an official notice will be posted informing attorneys that they may sign up for house counsel assignments at the Assigned Counsel Services Office (920 Frank Murphy Hall of Justice). 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 reasonable certainty that they will be available. The attorney may, if qualified, apply for assignment on both the capital and non-capital lists, but not for assignment to capital and non-capital cases on the same date.
- E. Approximately one month before the beginning of each calendar quarter, AOI judges will assign available attorneys to serve as house counsel in their respective courtrooms during the next calendar quarter. AOI judges must complete their assignments within seven (7) days. Pursuant to Supreme Court Administrative Order 1997-5, twenty-five percent

¹ The current listing of AOI judges appears in Schedule A.

(25%) of the available dates will be assigned to the Legal Aid and Defenders Association (LADA).

- F. After the assignments have been completed, an AOI house counsel calendar will be sent to each AOI judge. Calendars for all AOI courtrooms will be posted in the Attorney Lounge (3rd floor FMHJ). Attorneys selected to serve as AOI house counsel will be notified of assignment dates and locations.
- G. An AOI judge may make no more than five (5) house counsel assignments per attorney per quarter. If an attorney previously assigned per Section 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 (substitute) an attorney. 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 System²

- A. Trial judges and AOI judges may not make more than eight (8) assignments to any attorney during a two-week assignment rotation. Any trial or AOI judge authorized for a one-week rotation may not make more than four (4) assignments to any attorney during that one-week rotation. Assignments include both 36th and out-county district court cases. The order of rotation will be based on seniority. Any exceptions to the order of rotation may be permitted at the discretion of the Chief Judge. If a judge is unable to complete assignments on one or more days during the two-week assignment rotation, the assignments will be made by the Chief Judge or designee. Assignments by the Chief Judge are governed by the limits in Section IV.
- B. A trial 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. Chief Judge Assignments

- A. The Chief Judge will make attorney assignments on ten (10) criminal cases per week. The specific cases for Chief Judge assignment will be identified by Assigned Counsel Services.
- B. The Chief Judge will make all assignments during the week of the Circuit Court Judges Conference.
- C. The Chief Judge may make no more than eight (8) assignments to any attorney during a

² The current Criminal Division trial judges appear in Schedule B.

calendar year.

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 if the defendant initially planned to retain counsel, appears at a preliminary examination and subsequently 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 limits used in Section III A and B, also apply to the Presiding Judge.

VI. Other Assignments

A. Removal/Replacement of Counsel

If a defendant demands that appointed counsel be replaced or if an attorney is otherwise removed, the Third Judicial Circuit Court judge before whom the defendant is appearing shall assign an alternate attorney. A report regarding removal requests shall be generated monthly for the Standing Assignment Review Committee (See XI - 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. A judge may remove an attorney who fails to appear at a scheduled proceeding. Accepting the assigned attorney's designated stand-in shall be at the discretion of the judge.

B. 36th District Court House Counsel Assignments

Assignments will be given to attorneys to represent indigent defendants who appear at exam without counsel. A sign up date will be posted in the Attorney Lounge and in the Assigned Counsel Services Office (920 Frank Murphy Hall of Justice). Assignment will be made to attorneys in the order of their arrival on sign up day. Each attorney may serve only once every three months. Attorneys serving as House Counsel at preliminary exams must be CAP certified and on the Criminal Division Assigned Counsel List.

C. Detroit Police Line-ups

Assignments for Detroit Police line-ups are made on the same day as 36th District Court house counsel assignments for preliminary exams. Attorneys cover line-ups for a 24 hour period. During the 24 hours, counsel is expected to be available on short notice to supervise line-ups at the Control Center, Detroit Police Headquarters. Attorneys may receive an assignment as Line-up Counsel no more than once every three months.

D. Juvenile Waivers

Attorneys who have completed Criminal Advocacy Program seminars on juvenile waivers or any other court-sponsored juvenile certification program may sign up once a month at Assigned Counsel Services. A calendar will be posted for these assignments. Attorneys on the list must provide a number where they can be reached nights, weekends and holidays.

VII. Case Packaging

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

VIII. 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.

IX. 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.
- B. Each trial judge will receive a report every six (6) months listing the probation violation assignments (cases) made to each attorney.
- 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.
- D. In the event that assignments exceed established limitations, an exception report will be sent to the Chief Judge.

X. Compliance

The Executive Court Administrator will notify the Chief Judge and 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 the ability to assign house counsel and shall repose 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.

XI. 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.


XII. 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. Failure to comply may result in the non-payment of fees and removal from future assignments.
- B. Attorneys may petition the Executive Court Administrator for payment of extraordinary fees.

XIII. Miscellaneous

All CAP-certified attorneys are to notify the Assigned Counsel Services Office of any change in business address, telephone number, FAX number or pager number.

Administrative Order 1998-07 is hereby rescinded.


Michael F. Sapala, Chief Judge
Third Judicial Circuit

Dated: November 10, 1998