



THE THIRD JUDICIAL CIRCUIT
OF MICHIGAN

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DETROIT, MICHIGAN 48226-3413

ADMINISTRATIVE ORDER 2006 – 01

**STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT**

**SUBJECT: PLAN FOR ASSIGNMENT OF COUNSEL IN THE THIRD
JUDICIAL CIRCUIT**

This Administrative Order rescinds and replaces Administrative Order 2004-05.

Pursuant to MCR 8.112(B) and 8.123(C), the Third Judicial Circuit (the Court) adopts the following as its Plan for the Assignment of Counsel:

I. Introduction

A. Organization of the Plan for Assignment of Counsel. The Court presently maintains a Criminal Division to adjudicate criminal cases within its jurisdiction and a Domestic Relations Section and Juvenile Section to adjudicate cases within the jurisdiction of its Family Division. In order to take into account how cases are processed and the traditional methods of assigning counsel in these different parts of the Court, the Court's Plan for Assignment of Counsel (the Plan) is organized into three parts, each of which details how assignments for appointed counsel are made in these divisions of the Court.

II. Assignment of Counsel, Family Division – Domestic Relations Section

A. Scope. Where appointment of counsel for an indigent party is required involving felony non-support, personal protection matters (PPO), paternity, contempt of court show cause proceedings, or other cases within the jurisdiction of the Third Circuit Court – Family Division – Domestic Relations Section, appointment of counsel shall be made pursuant to the following provisions.

B. Attorney Eligibility.

1. **Requirements.** Attorneys seeking house counsel assignments for domestic relations matters are required to submit to the Case Processing Department, 770 Coleman A. Young Municipal Center or the Office of Assigned Counsel Services, 1025 E. Forest Avenue, Suite 203/204 the following:
 - a. A completed Attorney Profile/Application (Profile). Applications are available in the Case Processing Department and Assigned Counsel Services Office.
 - b. Proof of completion/certification of annual attorney training issued by the Court's designated educational entity.
 - c. All certified attorneys shall notify the Assigned Counsel Services Office of any change in business address, email address, telephone number, FAX number or pager number.
 - d. A statement of prior experience in the field of domestic relations law.
 - e. Membership in good standing in the State Bar of Michigan.
2. **The Domestic Relations Attorney Review Committee.** The Domestic Relations Attorney Review Committee (the Committee) includes the Presiding Judge of the Domestic Relations Section, the Executive Court Administrator (or designated representative), and two judges serving in the Domestic Relations Section. The Presiding Judge shall annually select these judges on a rotational basis.
 - a. The Committee shall meet periodically to review attorney profiles and determine in its sole discretion whether an attorney is qualified, under the foregoing provisions for placement on the Assigned Counsel Eligibility List. The Committee shall also designate those attorneys eligible to receive assignments as appellate counsel.
 - b. The Committee shall also remove attorneys in its sole discretion from the Assigned Counsel Eligibility List who violate court policy and/or do not demonstrate the ability to provide adequate representation to clients.
3. **The Assigned Counsel Eligibility List.** The names of all attorneys approved by the Committee shall be maintained in an automated assigned counsel program database. The database will contain all attorneys approved for assignment in the Domestic Relations Section. The database of approved attorneys shall constitute the Domestic Relations Assigned Counsel Eligibility List (Eligibility List).
 - a. Printed copies of the Eligibility List shall be provided to the Bench.

- b. Payment to attorneys for services rendered who receive judicial appointments will be at the Court's discretion if they are not on the Eligibility List.

4. Removal From the Eligibility List.

- a. Complaints about attorneys who are assigned cases under the provisions of this Division shall be forwarded to the Committee using the Assigned Counsel Complaint/Request for Discipline form.

- (1) The Attorney Review Committee and the attorney shall be notified of instances of unexcused or unreasonable tardiness or absence of assigned counsel and other policy violations.
- (2) Upon being notified of an unexcused or unreasonable tardiness or absence of assigned counsel, the Presiding Judge shall, via first class mail, notify the attorney that another instance of unexcused or unreasonable tardiness or absence within the next six month period shall, without further notice to the attorney, result in the attorney's name being deleted from the Eligibility List. Assigned Counsel Services shall remove from the Eligibility List the names of attorneys who have failed to comply after being sent a warning letter.
- (3) For other good cause, upon being notified of other complaints against assigned counsel, the Committee shall review the circumstances of the complaint and in its sole discretion take such action as deemed appropriate, including removal from the Eligibility List.
- (4) If an attorney is removed from the Eligibility List, the attorney may apply for reinstatement if the attorney can otherwise satisfy the requirements of Section II (B1). However, the attorney may not be placed on the Eligibility List within 90 days from the removal date.
- (5) Upon being informed that an attorney has been suspended or disbarred from the practice of law or has not completed the required training, the attorney shall be removed from the Eligibility List without further notice until the attorney demonstrates training certification, and/or membership in good standing with the State Bar of Michigan.

C. Assignment of Counsel.

1. In order to ensure equitable distribution of assignments, House Counsel assignments are made on a rotational basis from the Assigned Counsel Eligibility List.

2. Attorneys shall be notified of assignment (type, date, time, and place of hearing) via email.
3. Scope of Appointment.
 - a. House Counsel assignments to the PPO and Show Cause dockets shall be for the purposes of that hearing day only.
 - b. Assigned Counsel assignments to felony non-support cases or to a paternity case in which no order of filiation has been entered shall be through case closure or the entry of an order of filiation. Once appointed, assigned counsel shall not be removed from the case before sentencing or an order of filiation has been entered unless upon order of the Court for good cause.

D. Removal/Replacement of Counsel.

A judge may remove an attorney who fails to appear at a scheduled hearing or for other good cause. Accepting the assigned attorney's designated stand-in shall be at the discretion of the judge. Designated stand-ins must be CAP certified.

E. Compensation.

1. Attorneys serving as house counsel for the PPO or Show Cause dockets shall submit vouchers for payment as directed by the Case Processing Department on the day of the assignment. Compensation for service as house counsel for the PPO or Show Cause Dockets is per half day based upon the Court's applicable fee schedule.
2. Assigned counsel shall submit vouchers to the Case Processing Department for felony non-support, pre-filiation paternity cases and appeals, under the provisions of the applicable fee schedule.
3. The Case Processing Department shall submit vouchers to the Office of Budget and Finance for review and processing.
4. Disputes: Attorneys may appeal payment discrepancies by completing an attorney inquiry form available in the Office of Budget and Finance. Upon receipt of an attorney inquiry concerning a payment discrepancy, management from the Office of Budget and Finance shall review and investigate the complaint and make any fee adjustments as required.

III. Assignment of Counsel, Family Division - Juvenile Section

- A Scope. Assignment of counsel for an indigent party is required for children in delinquency cases and for respondents and children in child protection proceedings or other cases within the jurisdiction of the Third Circuit Court Family Division-Juvenile Section. Assignment of counsel in the Juvenile Section shall be made pursuant to the following provisions, except where the

Court has entered into a contract with a vendor, such as the Legal Aid and Defenders Association (LADA) or Michigan Children's Law Center (MCLC). The contracts shall govern the provisions of assigned counsel services by these vendors.

B. Attorney Eligibility.

1. **Requirements:** Attorneys seeking house counsel assignments in the Juvenile Section are required to submit to the Office of Assigned Counsel Services, 1025 E. Forest Avenue, Bldg. A, Suite B12 the following:
 - a. A completed Attorney Profile/Application (Profile). Applications are available in the Lincoln Hall of Justice Office of Assigned Counsel Services.
 - b. Annual proof of completion/certification of attorney training issued by the Court's designated educational entity.
 - c. All certified attorneys shall notify the Assigned Counsel Services Office of any change in business address, email address, telephone number, FAX number or pager number.
 - d. A statement of prior experience in the area of juvenile law.
 - e. Membership in good standing in the State Bar of Michigan.

2. **Appeals.**

In addition to the foregoing eligibility requirements, attorneys seeking appellate assignments must submit a sample brief for review by the Juvenile Attorney Review Committee.

3. **Designated Cases.**

In addition to the foregoing eligibility requirements, attorneys seeking assignments on designated cases must provide proof of current Detroit-Wayne County Criminal Advocacy Program (CAP) yearly certification.

4. **The Juvenile Attorney Review Committee.**

The Juvenile Attorney Review Committee (the Committee) includes the Presiding Judge of the Juvenile Section, the Executive Court Administrator (or designated representative), and two judges serving in the Juvenile Section. The Presiding Judge shall annually select these judges on a rotational basis.

- a. The Committee shall meet periodically to review attorney profiles and determine whether an attorney is qualified, under the foregoing provisions for placement on the Assigned Counsel Eligibility List.

The Committee shall also designate those attorneys eligible to receive appointments as appellate counsel.

- b. The Committee shall also remove attorneys from the Assigned Counsel Eligibility List who violate court policy and/or do not demonstrate the ability to provide adequate representation to clients.

5. The Assigned Counsel Eligibility List.

The names of all attorneys approved by the Committee shall be maintained in an automated assigned counsel program database. The database will contain attorneys approved for assignment in the Juvenile Section. The database of approved attorneys shall constitute the Juvenile Assigned Counsel Eligibility List (Eligibility List).

- a. Printed copies of the Eligibility List shall be provided to the Bench.
- b. Payment to attorneys for services rendered who receive judicial appointments will be at the Court's discretion if they are not on the Eligibility List.

6. Removal from the Eligibility List.

- a. Complaints about attorneys who are assigned cases under the provisions of this Division shall be forwarded to The Committee using the Assigned Counsel Complaint/Request for Discipline form.
 - (1) The Attorney Review Committee and the attorney should be notified of instances of unexcused or unreasonable tardiness or absence of assigned counsel and other policy violations.
 - (2) Upon being notified of an unexcused or unreasonable tardiness or absence of assigned counsel, the Presiding Judge shall, via first class mail, notify the attorney that another instance of unexcused or unreasonable tardiness or absence within the next six month period shall, without further notice to the attorney, result in the attorney's name being deleted from the Eligibility List. Assigned Counsel Services shall remove from the Eligibility List the names of attorneys who have failed to comply after being sent a warning letter.
 - (3) For other good cause, upon being notified of other complaints against assigned counsel, the Committee shall review the circumstances of the complaint and in its sole discretion take such action as deemed appropriate, including removal from the Eligibility List.
 - (4) If an attorney is removed from the Eligibility List, the attorney may apply for reinstatement if the attorney can otherwise satisfy the

requirements of Section III (B1). However, the attorney may not be placed on the Eligibility List within 90 days from the removal date.

- (5) Upon being informed that an attorney has been suspended or disbarred from the practice of law or has not completed the required training, the attorney shall be removed from the Eligibility List without further notice and until such time that compliance of the previous mentioned requirements are obtained.

C. Assignment of Counsel.

1. To ensure an equitable distribution of assignments, house counsel assignments are made on a rotational basis from the Eligibility List. A sufficient number of attorneys shall be assigned to represent all indigent parties for each daily docket. Assignments shall be made only to attorneys who are on the Eligibility List. House counsel assignments to LADA and MCLC are also made on a rotational basis and are designed to ensure that the number of assignments comply with contractual requirements.
2. Reassignment of Counsel/Case Packaging
 - a. Under the one judge-one family rule, attorneys shall be reassigned to cover the same family or the same party if there is an "open case" i.e. ongoing supervision, wardship, jurisdiction or order of a Judge regarding new issues or petitions.
 - b. For cases closed within one year, the same attorney shall be reassigned when possible.
 - c. If it has been more than one year since closure, the case shall be assigned by rotation according to the Eligibility List.
3. Scope of Assignment. The assignment of an attorney serving as house counsel shall be scheduled in half-day intervals unless assigned to represent a party in an ongoing case as previously defined. Such assignment continues until case closure.

D. Removal/Replacement of Counsel.

A judge may remove an attorney who fails to appear at a scheduled hearing or for other good cause. Accepting the assigned attorney's designated stand-in shall be at the discretion of the judge.

E. Compensation.

1. LADA, MCLC, and any other contracted agencies shall be compensated according to the terms of the existing contract between the Court and that agency.

2. Individual Assigned Counsel

- a. Compensation for private attorneys shall be pursuant to the Court's applicable fee schedule. Copies of the current fee schedule are available in the Office of Budget and Finance.
 - b. Verification of Services and Request for Payment of Attorney Fees forms shall be provided for payment for services in the following instances: standby counsel, guardian ad-litem, adoptions, non-party adults, extraordinary fees, mediation, AWOLP docket, show-ups, custody hearings and appeals.
3. Disputes: Attorneys may appeal payment discrepancies by completing an attorney inquiry form available in the Office of Budget and Finance. Upon receipt of an attorney inquiry concerning a payment discrepancy, management from the Office of Budget and Finance shall review and investigate the complaint and make any fee adjustments as required.

IV. Assignment of Counsel, Criminal Division

- A. Scope. The following provisions govern the selection and appointment of counsel for representation of indigent defendants in felony cases in the Third Circuit Court Criminal Division.
- B. Attorney Eligibility.
 1. Attorneys shall qualify for assigned counsel appointments as specified below by submitting to the Assigned Counsel Services Office, located at the Frank Murphy Hall of Justice (FMHJ) information demonstrating the following:
 - a. A completed Attorney Profile/Application (Profile). Applications are available in the Office of Assigned Counsel Services.
 - b. Membership in good standing in the State Bar of Michigan.
 - c. Annual continuing legal education certification from the Detroit-Wayne County Criminal Advocacy Program (CAP).
 - d. All certified attorneys shall notify the Assigned Counsel Services Office of any change in business address, email address, telephone number, FAX number or pager number.
 - e. Statement/description of experience in criminal law.
 - f. Residence or bona fide office in Wayne County.

2. Annual Eligibility Review

- a. On an annual basis, the Assigned Counsel Services Office shall review the list of those attorneys who are certified by CAP to receive assignments and review the Michigan Bar Association membership status of all attorneys who are otherwise certified by the CAP as eligible to receive assignments. The Assigned Counsel Services Office shall then distribute a list of attorneys eligible to receive assignments to the judges of the Criminal Division. Assignments may not be made to those attorneys who are not CAP certified or who have been suspended or disbarred from the practice of law.
- b. Payment to attorneys for services rendered who receive judicial appointments will be at the Court's discretion if they are not on the CAP certified list.

C. House Counsel Assignment System – Arraignment on Information (AOI).

1. A capital (maximum sentence of life) list and a non-capital list shall be maintained by the Office of Assigned Counsel Services for assignment as house counsel.
2. Spot assignments in AOI courtrooms shall be made from the appropriate capital and non-capital house counsel availability lists.
3. 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. The notice will allow one week for attorneys to sign up for a maximum of ten days per month. Attorneys are encouraged to sign up for an entire week if possible.
4. Attorneys will provide specific dates when they know with reasonable certainty that they will be available.
5. 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.
6. 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 and the Office of Assigned Counsel Services.
7. An AOI judge may make no more than five (5) house counsel assignments per attorney, per quarter. If an attorney previously assigned per Section IV (C) cannot appear on any or all of the days assigned as house counsel, the AOI judge shall request that the Chief Judge or

designee appoint an attorney. This reassignment is subject to the limitations of this section.

8. Attorneys serving as house counsel in an AOI courtroom will represent all probation violators, defendants arrested on a capias warrant 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 (on non-appellate matters).

D. Judge's Two-Week Rotation.

1. Trial judges and AOI judges may not make more than eight (8) appointments 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) appointments to any attorney during that one-week rotation. Appointments 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 or designee. 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 F.
2. In those cases where one defendant has several cases, the assignment will be packaged as one case and reassigned administratively by the Chief Judge.

E. Probation Violations.

1. A trial judge may not assign more than 26 probation violation cases per calendar year to any given attorney.
2. An attorney shall not receive any more than a total of 200 probation violation assignments per calendar year from the entire Third Circuit Court Criminal Division.
3. Judges shall be provided with a report of attorneys who have received at least 20 probation violation assignments from that judge as well as a report of attorneys who have received more than 180 probation violation assignments from the entire Third Circuit Court Criminal Division.
4. When an attorney has received at least 20 assignments during a calendar year from a trial judge and/or has received at least 180 probation violation assignments from the entire Third Circuit Court Criminal Division, the Court will notify the attorney in writing that there will be no compensation for handling probation violations that exceed the calendar year limit.

5. The Office of Assigned Counsel Services shall provide the Criminal Division judges daily with the names and phone numbers of the CAP certified attorneys who have indicated their availability to do probation violation and/or spot assignments.

F. Chief Judge Assignments.

1. The Chief Judge or designee will make attorney assignments on fifteen (15) criminal cases per week. Assigned Counsel Services will identify the specific cases for Chief Judge assignment.
 - a. The assignments, with the exception of capital cases, are to be given to newly CAP certified attorneys, attorneys returning from extended medical leave and certified attorneys who have not received assignments for an extended period of time.
2. The Chief Judge or designee shall make all assignments during the week of the Circuit Court Judge's Conference.
3. The Chief Judge or designee shall make no more than eight (8) assignments to any attorney during a calendar year.

G. Administrative Assignments.

1. Assignments made as a result of case packaging are to be counted as case packaging assignments and will be reassigned by the Chief Judge. These cases do not count for purposes of regular assignment of cases.
2. 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.
3. Assignments made to the Legal Aid and Defender's Association (LADA) are counted as Defender's assignments.
4. Thirty-Six District Court House Counsel Assignments - Assignments will be given to attorneys to represent indigent defendants who appear at preliminary examination without counsel. A sign-up date will be posted in the Attorney Lounge and in the Assigned Counsel Services Office in Frank Murphy Hall of Justice. Assignments 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 examinations must be CAP certified and on the Criminal Division Assigned Counsel List.
5. 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 examinations. Attorneys cover line-ups for a 24-hour

period. During the 24 hours, an attorney is expected to be available on short notice to supervise line-ups at the designated Detroit Police Department locations.

H. Other Assignments

1. **Out-County District Court Spot Assignments - The Manager of Assigned Counsel Services 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. Other assignments may be issued administratively under extenuating circumstances.**
2. **Juvenile Waivers - Attorneys on the capital list 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 shall be posted for these assignments. Attorneys on the list must provide a telephone or pager number where they can be reached evenings, weekends, and holidays.**
3. **When the Presiding Judge is on the regular assignment rotation, the limits used in Section IV D also apply to the Presiding Judge.**

I. Scope of Assignment.

1. **Case Packaging. An attorney who is assigned to represent a defendant in a pending case shall be assigned all subsequent new cases involving that defendant. Such assignments shall be counted as case packaging administrative assignments.**
2. **Removal/Replacement of Counsel**
 - a. **If a defendant demands that appointed counsel be replaced or if an attorney is otherwise removed, the Third Circuit Court judge before whom the defendant is appearing may appoint an alternate attorney. If the defendant appears after the issuance of a capias, the judge should assign the attorney originally assigned whenever practicable. The judge may, in his or her discretion, appoint an attorney other than the one originally assigned. These are termed "on-the-spot" assignments. An attorney may not receive more than twelve (12) "on-the-spot" assignments per calendar year from any one trial judge.**
 - b. **A judge may remove an attorney who fails to appear at a scheduled hearing or for other good cause. Accepting the assigned attorney's designated stand-in shall be at the discretion of the judge. Designated stand-ins must be CAP certified.**

- c. A judge may remove an attorney who fails to appear at a scheduled hearing or for other good cause. Where a judge has removed an attorney from a case for failure to appear or for other good cause, the judge may also refer the matter to the Attorney Review Committee for further action, including barring the attorney from receiving further assignments.

J. Periodic Reports

Reports shall be prepared by Assigned Counsel Services and forwarded to each Judge of the Criminal Division on a monthly basis, to the Presiding Judge and the judge assigned to the two-week rotation on a bi-weekly basis, detailing the following:

1. The number of AOI house counsel assignments (days) received by each attorney;
2. The number of probation violation assignments (cases) made by each trial judge to each attorney;
3. The number of "on-the-spot" assignments (cases) made by each trial judge to each attorney;
4. The number of assignments (cases) made to each attorney during a judge's regular two-week assignment rotation period;
5. The total number of assignments made to each attorney by the Criminal Division Bench;
6. Each report shall include the names of the judges making the assignments;
7. In the event that assignments exceed established limitations, Assigned Counsel Services shall send an exception report to the Chief Judge or designee.

K. Compliance.

1. The Executive Court Administrator shall notify the Chief Judge and any judge who approaches assignment limits in any calendar year. Each trial judge shall be notified when an attorney has received twenty (20) probation violation assignments from the judge (limit: 26). Each trial judge shall be notified when an attorney has received 8 "on-the-spot" assignments from the judge (limit: 12). Each judge (AOI and trial) shall receive notice when an attorney has received 6 assignments from the judge during a regular two-week rotation period (limit: 8).

2. Any judge exceeding the assignment limit, may be removed from the assignment rotation by the Chief Judge. A judge so removed may be returned to the rotation at the discretion of the Chief Judge.

L. Attorney Review Committee.

The Criminal Attorney Review Committee (the Committee) includes the Presiding Judge of the Criminal Division, the Executive Court Administrator (or designated representative), and two judges serving in the Criminal Division. The Presiding Judge shall annually select these judges on a rotational basis.

M. Compensation.

1. Assigned counsel shall be compensated on a pay-per-event basis. Details of the compensation system may be obtained through the Office of Budget and Finance.
 - a. Vouchers for payment of services rendered shall be submitted to the Office of Assigned Counsel Services for processing. Vouchers for payment must be in conformance with Court requirements. Failure to comply may result in the delay of voucher payment and/or removal from future assignment lists.
 - b. The Office of Budget and Finance will process vouchers for payment of services in the order in which they are received. Attorneys must submit vouchers no later than sixty (60) days after the disposition of each case. The Court reserves the right to deny payment on vouchers submitted more than sixty (60) days after disposition.

V. Judicial Appointments

A Judge shall not appoint 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 third degree of relationship to the attorney, or has a relationship with an attorney that creates an appearance of impropriety or partiality, or which would otherwise lead to the disqualification of a judge under MCR 2.003.

VI. Reports/Records

- A. The Court shall annually report Assigned Counsel information to the State Court Administrator's Office pursuant to MCR 8.123.

- B. The Court shall maintain all Assigned Counsel records as required by MCR 8.123 and provide those records to the State Court Administrator's Office when requested.

VII. Administration of the Plan

The Director of Assigned Counsel Services shall have overall responsibility for the administration of this Plan, under the general supervision of the Executive Court Administrator.

VIII. Reports to the State Court Administrator

Upon request from the State Court Administrator, the Executive Court Administrator shall provide a copy of the most recent annual report pertaining to appointments made under any or all sections of this Administrative Order or data on an individual attorney or judge for a period specified in the request.



Mary Beth Kelly
Chief Judge
Third Judicial Circuit

DATED: February 22, 2006