



THIRD JUDICIAL CIRCUIT
OF MICHIGAN

ROBERT J. COLOMBO, JR.
CHIEF JUDGE

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ADMINISTRATIVE ORDER 2017 – 07

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT

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

This Administrative Order rescinds and replaces Administrative Order 2017 – 04.

Effective: April 19, 2017

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. Assignment of Counsel, Criminal Division

A. Scope. The Individual contracts shall govern the provisions of Assigned Counsel Services by the Metropolitan Justice Center of Southeast Michigan (MJCSEM), formerly known as the Legal Aid and Defender Association, Inc., and other groups of practicing attorneys. Appointment of counsel for representation of indigent defendants in felony cases in the Third Circuit Court Criminal Division shall be made pursuant to the following provisions.

B. Attorney Eligibility.

1. Attorneys shall qualify for assigned counsel appointments for non-capital and capital cases 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, which can be found on the Court's website:

<https://www.3rdcc.org/Documents/Criminal/Links/Attorney%20Assignment%20Application.pdf>

- 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); inclusive of being a member in good standing with the Wayne County Criminal Defense Bar Association (WCCDBA).
 - d. Residence or bona fide office in Wayne County.
 - e. A valid e-mail address.
 - f. A valid telephone and/or cellular number with voice mail capability.
2. All attorneys newly admitted to the Bar will be paired with a mentor as a prerequisite to receiving assignments, as approved by the Wayne County Criminal Defense Bar Association. As part of this mentorship the new attorney will need to provide written verification of having completed the following requirements:
 - a. The attorney must accompany his/her mentor to a pre-exam hearing, an arraignment on information, a plea, sentencing and jail visit. Observation of each event must occur within the jurisdiction of Third Circuit Court Criminal Division.
 - b. The attorney must accompany his/her mentor to observe and thoroughly discuss at least two preliminary examinations.
 - c. The attorney must provide written proof of having observed at least one completed Third Circuit Court jury trial from the attorneys' mentor.
 3. Attorneys shall qualify for assigned counsel appointments for capital cases 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. Must meet all requirements as outlined in section I(B)(1).
 - b. Must be approved by a majority of the Judges sitting on the Attorney Review Committee.
 4. All certified attorneys shall notify the Assigned Counsel Services Office within three business days of any change in business address, email address, telephone and/or cellular number or FAX number.

5. 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 and the District Judges.
- b. Payment to attorneys for services rendered who receive judicial appointments will be at the Presiding Judge's discretion if they are not on the CAP certified 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 Attorney Review Committee using the Assigned Counsel Services Complaint/Request for Discipline form. The Committee shall then review the circumstances of the complaint and in its sole discretion take such action as deemed appropriate, including removal from the Eligibility List.
 1. If an attorney admits to two incidents filed against him/her in trial or appellate court for ineffective counsel, within a five-year period, that attorney will be removed from the Assigned Counsel List for a period to be determined by the Attorney Review Committee.
- b. 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 I(B)(1).
- c. Upon being informed that an attorney has been suspended or disbarred from the practice of law or that he/she is not CAP certified, the attorney shall be removed from the Eligibility List without further notice and until such time that compliance with the previously mentioned requirements is obtained.

C. Attorney Review Committee

The Attorney Review Committee (the Committee) includes the Presiding Judge of the Criminal Division, the Deputy Court Administrator (or designated representative), and at least two judges serving in the Criminal Division. The Presiding Judge shall select these judges.

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

placement on both the non-capital and capital Assigned Counsel Eligibility List.

- b. The Committee shall also meet to discuss any complaints filed against Assigned Counsel to address allegations of, including but not limited to, any violations of court policy or the code of professional responsibility, or the inability to provide adequate representation.
- c. Complaints about attorneys who are assigned cases under the provisions of this Division shall be forwarded to the Committee via the Manager of Assigned Counsel Services using the Assigned Counsel Complaint form.

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

1. Attorneys serving as house counsel in an AOI courtroom will represent all probation violators and 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).
2. 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.
3. Attorneys will provide specific dates when they know with reasonable certainty that they will be available.
4. 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 fourteen (14) days after sign-up has ended. Notification is sent to each AOI judge regarding the commencement of AOI sign-up and when their selections are due to Assigned Counsel Services.
5. MJCSEM assigned days will be administratively entered prior to sign-up. 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 Continuing Legal Education Center and the Office of Assigned Counsel Services.
6. An AOI judge may assign no more than five (5) house counsel days per attorney, per quarter. If an attorney previously assigned per Section I (D) cannot appear on any or all of the days assigned as house counsel, the AOI judge shall contact Assigned Counsel Services for a replacement. This reassignment is subject to the limitations of this section.

7. Spot assignments in AOI courtrooms shall be made from the appropriate AOI House Counsel List. Furthermore, any AOI house counsel days or regular appointments to MJCSEM shall not be re-assigned.

E. Judge's Two-Week Assignment.

1. The Presiding Judge, trial judges, and AOI judges may not make more than eight (8) appointments to any attorney during their two-week assignment. Any judge authorized for a one-week assignment may not make more than four (4) appointments to any attorney during their one-week assignment. Appointments include both 36th and out-county district court cases. The assignment schedule is based upon random assignment. Any changes to the order of the assignment schedule shall be presented to Assigned Counsel Services in writing prior to the commencement of the scheduled assignment.

If a judge is unable to complete assignments on more than two consecutive days during the two-week assignment period, then other arrangements should be made for either the Presiding Judge to complete the assignments or another designated judge. Assigned Counsel Services should be notified promptly of any changes. Failure to return assignments within a 24 hour period may result in those assignments being made by the Presiding Judge.

2. In those cases where one defendant has several cases, the first assignment shall be entered under the Judge on assignment. All subsequent cases shall be entered administratively and not count against the Judge on assignment.

F. Probation Violation Assignments.

1. A trial judge may not assign more than 26 probation violation cases per calendar year to any given attorney. There will be no compensation for handling probation violations that exceed the calendar year limit.
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. There will be no compensation for handling probation violations that exceed the calendar year limit.
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 maintain a list of names and phone numbers of CAP certified attorneys who have indicated their availability to do probation violation and/or spot assignments. In the event an attorney is needed, the courtroom may contact Assigned Counsel Services for an available attorney.

G. Appellate Assignments.

1. Attorneys must complete all necessary requirements as outlined by the Michigan Appellate Assigned Counsel System (M.A.A.C.S.) to receive appellate assignments, including Motions for Relief from Judgment (6.500 motions). Assignments for appeals are made administratively through M.A.A.C.S. under the Chief Judge. All attorney requests for withdrawal as the appellate attorney shall be heard by the Presiding Judge.

H. Chief Judge Assignments.

1. The Chief Judge or Presiding Judge shall make attorney assignments on ten (10) criminal cases per week. Assigned Counsel Services will identify the specific cases for 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 Presiding Judge shall make attorney assignments in instances in which a person invokes their right to counsel during a custodial interrogation and/or as deemed necessary.
3. The Chief Judge or Presiding Judge shall make no more than eight (8) assignments to any attorney during a calendar year.

I. Administrative Assignments.

1. Assignments made as a result of case packaging are to be counted as an administrative assignment under the Chief Judge. These cases do not count for purposes of regular assignment of cases.
2. Assignments made to the MJCSEM are counted as Defender's assignments. MJCSEM assignments shall not be given to other attorneys unless prior approval has been given by the Presiding Judge.

3. Thirty-Six District Court House Counsel Assignments - Assignments will be given to attorneys to represent indigent defendants who appear at preliminary examination without counsel or where assigned counsel does not appear. A sign-up date will be posted in the Continuing Legal Education Center 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. An attorney shall serve only one day per quarter.
4. Show-ups - Assignments for show-ups are made on the same day as 36th District Court house counsel assignments for preliminary examinations. Attorneys cover show-ups for a 24-hour period, commencing at 8:00 a.m. During the 24 hours, an attorney is expected to be available on short notice to supervise line-ups at the designated law enforcement agency.

J. Other Assignments.

1. Out-County District Court Spot Assignments - The Manager of Assigned Counsel Services will assign an attorney from the eligibility 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. Spot assignments may be made by the district court judge under extenuating circumstances without prior approval from Assigned Counsel Services. District court judges are limited to no more than 12 "on-the-spot" assignments to any one attorney per calendar year.
2. Juvenile Waivers - Attorneys who are designated "capital" on the Assigned Counsel List who have completed CAP 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 phone number where they can be reached evenings, weekends, and holidays.
- 3 Assignments made on welfare fraud cases shall be made and counted toward the Judge conducting the docket. An attorney shall serve only one day per quarter. These cases do not count for purposes of regular assignment of cases.

K. Scope of Assignment.

1. Case Packaging. An attorney, MJCSEM, or other attorney group who is assigned to represent a defendant in a pending case shall be assigned all additional cases involving that defendant. Such assignments shall be counted as case packaging administrative assignments.

2. Removal/Replacement of Counsel

- a. If appointed counsel is 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 any more than twelve (12) "on-the-spot" assignments per calendar year from any judge, either in the circuit court or district court.
- 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. In instances 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.

L. Periodic Reports.

Reports shall be prepared by Assigned Counsel Services and forwarded detailing the following:

1. The number of AOI house counsel days received by each attorney quarterly to all AOI and Pre-Exam Judges;
2. The number of probation violation assignments (cases) and spot assignments made by the Criminal Bench to each attorney on a monthly basis;
3. The number of assignments (cases) made to each attorney during a judge's regular two-week or one-week assignment period (as requested);
4. The number of assignments (cases) made to each attorney over the last four weeks of assignments shall be provided to the current judge at the beginning of his or her assignment period;
5. The total number of assignments made to each attorney by the Criminal Bench on a monthly basis;
6. In the event that assignments exceed established limitations, Assigned Counsel Services shall send an exception report to the Chief Judge or designee.

M. Compliance.

1. Assigned Counsel Services shall notify the Presiding Judge or the Deputy Court Administrator of 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 (limit: 26).

Each trial judge shall be notified when an attorney has received 8 “on-the-spot” assignments (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 assignment period (limit: 8).

2. Any judge exceeding the assignment limit or in violation of any other rule outlined in the LAO may be removed from the assignment schedule by the Presiding Judge. A judge so removed may be returned to the schedule at the discretion of the Presiding Judge.

N. Compensation.

1. Assigned counsel shall be compensated based upon the charge at the time of the Arraignment on the Warrant and on a pay-per-event basis (including those instances in which a felony is reduced to a misdemeanor). 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 the assignment list.

The Office of Budget and Finance will process vouchers for payment of services in the order in which they are received. Attorneys should submit vouchers no later than sixty (60) days after the disposition of each case. For any vouchers received after 60 days, the Court reserves the right, to be exercised at its sole discretion, to decline payment. Upon receipt of a timely attorney inquiry concerning an alleged payment discrepancy, personnel from the Office of Budget and Finance shall review and investigate the alleged discrepancy and make any necessary fee adjustments.

2. MJCSEM or any other contracted attorney group shall be compensated according to the terms of the existing contract between the Court and the attorney group. Any disputes regarding compensation shall be handled in accordance with the terms of the contract.

II. 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.

III. 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.

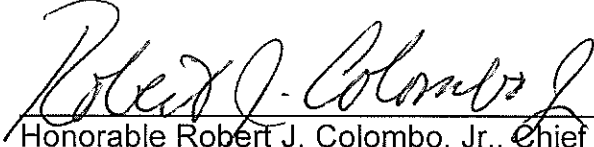
IV. Administration of the Plan

The Executive Court Administrator shall have overall responsibility for the administration of this Plan.

V. 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.

Dated: May 19, 2017



Honorable Robert J. Colombo, Jr., Chief Judge
Third Judicial Circuit of Michigan

Date Approved by SCAO: June 16, 2017