



**THIRD JUDICIAL CIRCUIT
OF MICHIGAN**

TIMOTHY M. KENNY
CHIEF JUDGE

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ADMINISTRATIVE ORDER 2020 – 01

**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 2017-07 as it relates to assignments in the Criminal Division.

Pursuant to MCR 8.112(B) and 8.123(C), the Third Circuit Court adopts the following as its plan for assignment of counsel in the Criminal Division:

IT IS ORDERED:

- I. Criminal Assignment Committee
 - A. A nine member Criminal Assignment Committee (Assignment Committee) shall serve as a standing committee to determine qualifications, evaluate and approve attorneys seeking to serve as assigned counsel in criminal cases, and be placed on the Indigent Defense Roster (Assignment Roster).
 - B. The Assignment Committee shall consist of three judges from the Third Judicial Circuit appointed by the Chief Judge or designee. Three attorneys eligible to receive appointments shall be appointed by the Wayne County Criminal Defense Bar Association. Three representatives appointed by the Wayne County Executive, of which, at least two shall be attorneys licensed to practice law in the State of Michigan. The Committee Chair shall be a member of the committee selected by the Chief Judge or designee, and the Committee shall meet as often as the Chair directs.

- C. The term of a member appointed to the Assignment Committee is one year ending December 31st of the calendar year of the appointment. Terms are automatically renewed unless a member is replaced by the appointing authority.
- D. An individual appointed to fill a vacancy shall serve for the balance of the term of the member replaced.

II. Attorney Review Committee

- A. A seven member Attorney Review Committee (Review Committee) shall serve as a standing committee to evaluate and make suspension and/or removal decisions from the Assignment Roster.
- B. Decisions to temporarily suspend or remove attorneys from an assignment roster frequently involve considering sensitive or confidential information, such as medical situations. Therefore, to protect the privacy of attorneys on the roster, the Review Committee shall consist of: three judges from the Third Judicial Circuit appointed by the Chief Judge or designee not on the Assignment Committee, one district court judge selected by the President of the Wayne County District Court Judges' Association, and three attorneys selected by the Wayne County Executive licensed to practice law in the State of Michigan and not already serving on the Assignment Committee.
- C. Committee members shall serve a term expiring on December 31st and may be renewed at the discretion of the appointing authority. The Chief Judge or designee shall select the Committee Chair and the Committee shall meet as needed to review suspension and removal issues.
- D. Suspension and removal decisions shall be made upon a majority vote of the Attorney Review Committee members present.
- E. Attorneys on the Assignment Roster are required to provide written notification to the Chair of the Attorney Review Committee and the Presiding Judge of the Criminal Division of any charges, sanctions, suspensions, or discipline from the State Bar of Michigan. Failure to provide written notification within seven days of such a finding may result in suspension or removal from the Assignment Roster.
- F. Attorneys on the Assignment Roster are required to provide written notification to the Chair of the Attorney Review Committee and the Presiding Judge of the Criminal Division of a finding by any trial or appellate court that their representation in a criminal case constituted ineffective assistance of counsel. Failure to provide written notification within seven days of such a finding may result in suspension or removal from the Assignment Roster.
- G. Service on the Assignment Roster is a privilege and not a right. Attorneys sanctioned or removed from the Assignment Roster may seek in writing a review of

the Committee's decision. This request must be made to the attention of the Chair of the Attorney Review Committee and the Presiding Judge of the Criminal Division within seven days of the notice being sent to the attorney of the decision. A formal hearing is not required. The review response shall be in writing and is final.

- H. The Review Committee does not discriminate on the basis of race, age, color, religion, national origin, gender, sexual orientation, veteran status, or disability provided the disability does not impair defendant's Sixth Amendment Right to effective counsel.
- I. This Order does not limit the authority of a judge assigned to a case to sanction or remove an attorney.

III. Assignment Committee Review

- A. Meeting minimum qualifications and training requirements does not necessarily ensure high-quality representation for indigent defendants. Therefore, the Assignment Committee shall annually review applications submitted each July to ensure counsels' ability, training, performance, and experience match the nature and complexity of the requested tier(s). This Committee shall establish the size of each Assignment Roster to promote and ensure high-quality representation for indigent defendants.
- B. The Assignment Committee shall encourage and consider feedback from all stakeholders regarding qualifications and eligibility to serve as assigned counsel.
- C. Decisions by the Assignment Committee shall be made with a majority vote of the committee members present and not by proxy.
- D. The Assignment Committee does not discriminate on the basis of race, age, color, religion, national origin, gender, sexual orientation, veteran status, or disability provided the disability does not impair defendant's Sixth Amendment Right to effective counsel.

IV. Assignment Roster Tiers

TIER	DESCRIPTION
1	Murder and Manslaughter
2	Criminal Sexual Conduct in the 1 st , 2 nd , and 3 rd Degree Child Abuse 1 st and 2 nd Degree
3	All other Capital Offenses Possession with the Intent to Deliver 450 – 1000 grams of a schedule 1 or 2 substance
4	Non-Capital offenses

- A. Attorneys must specify on their application, all Tiers for which they want to be considered.
- B. Failure to indicate interest in all tiers for which the attorney is applying will serve as notice to the Assignment Committee that the attorney is opting out of the lower tier.

V. Assigned Counsel Eligibility

- A. Attorneys seeking to be qualified as assigned counsel shall:
 - 1. Submit verification of the completion of all training and professional experience requirements for the tier to which they apply;
 - 2. Submit a completed application by the due date established and maintained on the Court's website;
 - 3. Be a licensed attorney in the State of Michigan and be in good standing with the State Bar of Michigan;
 - 4. Be a member in good standing of the Wayne County Defense Bar Association; and
 - 5. Be approved by the Assignment Committee before receiving appointments
- B. Attorneys shall verify annually that approved CLE courses are completed by the due date for application submission. Failure to do so shall result in automatic removal from the applicable Tier and the rejection of the applicable Tier.
- C. All applications and supporting documentation shall be submitted via the Third Circuit website.
- D. Service on the Assignment Roster is a privilege and not a right. Attorneys sanctioned or removed from the Assignment Roster may seek in writing a review of the Committee's decision. This request must be made to the attention of the Chair of the Attorney Review Committee and the Presiding Judge of the Criminal Division within seven days of the notice being sent to the applicant of the decision. A formal hearing is not required. The review response shall be in writing and is final.

VI. Training and Experience

- A. Michigan Supreme Court Administrative Order 2016-02 requires court appointed attorneys complete at least 12 hours annually of CLE courses relevant to the representation of the criminally accused. Nothing in this Order changes this obligation.
- B. **Tier 4 (Non-Capital Offenses)**
 - 1. As part of complying with Administrative Order 2016-02, attorneys not previously approved for this tier shall complete CLE courses (which may

include CAP courses) applicable to the following practice areas within the 12 months preceding the submission of the annual application:

- a. Training in the Michigan Rules of Evidence and effective direct and cross-examination
- b. Pretrial motions practice
- c. Collateral consequences for sentencing
- d. Training on effective use of technology in the courtroom

2. Attorneys previously approved for Tier 4 and seeking renewal in this same tier are only required to complete the above specific topics (1a - 1d) every three years for consideration to be approved for Tier 4; however, are still required to complete 12 hours annually of CLE courses pursuant to SCAO 2016-02.

3. Professional experience:

- a. First or Second Chair two or more preliminary examination hearings in any Michigan court, or
- b. Second Chair one felony jury trial (or a third preliminary examination may be substituted)

C. Tier 3 (Capital Offenses and Possession or intent to deliver 450 – 1000 grams of a schedule 1 or 2 controlled substance other than marijuana. MCL 333.7403(2)(a)(ii) and MCL 333.740(2)(a)(ii))

1. Attorneys shall complete the CLE course requirements listed for Tier 4.

2. Attorneys previously approved for Tier 3 and seeking renewal in this same tier are only required to complete the above specific topics found in VI (B)(1a - 1d) every three years for consideration to be approved for this tier; however, are still required to complete 12 hours annually of CLE courses pursuant to SCAO 2016-02.

3. Professional experience requirements shall, at a minimum, include one of the following within 12 months preceding submission of a new or renewal application:

- a. First chair two or more capital jury trials; or
- b. First chair one capital and three non-capital jury trials; or
- c. First chair four or more non-capital jury trials

D. Tier 2 (CSC and Child Abuse)

1. Attorneys shall complete professional experience and CLE requirements listed for Tier 3, and

2. Attorneys shall demonstrate completion of at least three CLE courses applicable to the following areas:
 - a. Examination and jury selection techniques unique to CSC and Child Abuse cases
 - b. Sex Offender Registry Act
 - c. Other Act and propensity evidence
 - d. DNA and *Daubert* issues
3. Attorneys previously approved for Tier 2 and seeking renewal in this same tier are only required to complete the above specific topics (2a - 2d) every three years for consideration to be approved for this tier; however, are still required to complete 12 hours annually of CLE courses pursuant to SCAO 2016-02.
4. Professional experience requirements shall, at a minimum, include one of the following within 12 months preceding submission of a new or renewal application:
 - a. First chair two or more capital jury trials; or
 - b. First chair one capital and three non-capital jury trials; or
 - c. First chair four or more non-capital jury trials

E. Tier 1 (Murder and Manslaughter)

1. Complete CLE training requirements for Tier 3, and
2. Complete CLE course applicable to "Trying Murder Cases".
3. Attorneys previously approved for Tier 1 and seeking renewal in this same tier are only required to complete the above specific topic every three years for consideration to be approved for this tier; however, are still required to complete 12 hours annually of CLE courses pursuant to SCAO 2016-02.
4. Professional experience requirements shall require the applicant:
 - a. First chair at least 15 adult felony jury trials to completion within the preceding five years of submitting a new or renewal application for this tier

VII. Indigent Appointments in Wayne County

- A. The following procedure of appointing counsel shall be initiated immediately after a determination that the defendant is eligible for indigent criminal defense services and the defendant's Arraignment on the Warrant.
- B. Appointments to private practice attorneys for felony offenses shall be automated and on a rotational basis from the Assignment Roster.

- C. District Courts in Wayne County shall provide Third Judicial Circuit's Office of Trial Court Services (Trial Court Services) with an electronic submission of the Petition and Order for Court Appointed Attorney, which will begin the automated assignment process.
- D. The system will identify the next attorney on the Assignment Roster. Attorneys shall accept the appointment(s) within four hours of attempted contact or the appointment is deemed declined. If accepted, the system will provide notification to the District Court for which the appointment was made.
- E. Attorneys who decline appointments are placed at the bottom of the rotational list and the availability of the next attorney on the list and notification begins again. The Attorney Review Committee will be notified if attorneys repeatedly decline or are unavailable for assignments.
- F. The Assignment Roster will be updated on the Court's website to assist the private attorneys in monitoring their status for rotational assignments.
- G. Assigned Counsel is ineligible to continue representation when an offense is amended or added for which counsel is not tier approved. In these situations, the Court Clerk must notify Trial Court Services, who will initiate the automated process from the applicable roster.
- H. To promote continuity in representation, defendants with pending cases in Wayne County charged with new felony offenses shall be appointed the same assigned counsel provided the attorney is approved to handle the new offense. Appointments made under this subsection shall not affect the attorney's position on the automated Assignment Roster.
- I. Attorneys who accept appointments shall ensure other obligations do not negatively impact their client's liberty interest. Therefore, private practice attorneys shall be ineligible to receive automated appointments if they represent four or more in-custody defendants at one time where trial has not been held within 91 days from the bind over at the preliminary examination.

VIII. Probation Violators and Absconders from Bond Procedure

- A. The following procedure of assigning counsel shall be initiated as soon as the defendant is determined to be eligible for indigent criminal defense services.
- B. Probation violators and defendant accused of absconding from bond are frequently in-custody and require immediate representation. To protect an accused's liberty interest and provide immediate representation, the following appointment process shall be used:

1. Unless otherwise designated in this section, appointments shall be automated and on a rotational basis from a Probation and Absconder Assignment Roster.
2. Attorneys approved and eligible to serve under this Order shall also be approved to serve on this Roster provided counsel makes a written request to Trial Court Services.
3. Attorneys appointed from this Roster shall serve as "House Counsel" for an arraignment courtroom or a group of trial courtrooms to represent probation violators and bond absconders subject to subsection C and D below.

C. Appointments for Probation Violators

1. When a probationer has not been appointed counsel for new felony charges in Wayne County, House Counsel shall be appointed for the arraignment on the violation.
2. When a probationer has already been appointed counsel for new felony charges in Wayne County, that attorney, not House Counsel, shall be appointed on all matters. Trial Court Services shall confirm the attorney is available to represent the probationer at the violation hearing, if demanded, within 14 days of the arraignment on the violation.
3. The Chief Judge may issue a docket directive limiting the number of appointments to assigned counsel under this section.

D. Appointments for Absconders from Bond

1. Consistent with MCR 2.117 (C)(2), the Court shall contact defendant's counsel of record to determine whether counsel is available and eligible to continue representing defendant who has absconded while on bond.
2. Prior appointed counsel of record shall continue representing defendant, unless prior counsel is ineligible or unavailable to continue representation.
3. When counsel of record is unavailable to appear at defendant's capias arraignment, House Counsel shall be temporarily appointed to argue bond, after which time prior counsel shall resume representation.
4. If House Counsel is ineligible or otherwise cannot serve, permanent counsel shall be appointed consistent with Section VI of this Order.

- E. Attorneys scheduled to serve as House Counsel may not substitute another attorney to cover his or her obligation under this section unless advance written permission is given by Trial Court Services. Trial Court Services shall provide

the Court and the Court Clerks with advance notice of any approved substitutions.

- F. If House Counsel fails to appear or is unreasonably late to court, the Court shall substitute house or floor counsel then serving in the Criminal Division to ensure indigent defendants receive timely representation.

IX. District Court Appointment Procedure


- A. The following procedure of appointing counsel for felony offenders shall be initiated immediately following a determination that the defendant is eligible for indigent criminal defense services and the defendant's arraignment on the warrant.
- B. The electronic submission of the Order/Petition triggers the automated system to assign counsel for all felony defendants.
- C. When new or replacement counsel needs to be appointed, the district court shall notify Trial Court Services who shall then appoint counsel on a rotational basis in accordance with section VI of this Order.
- D. The Chief Judge may issue a docket directive limiting the number of appointments to assigned counsel under this section.

X. District Court Appointment Procedure in Exigent Circumstances

- A. The Third Judicial Circuit recognizes, however, situations will arise in district court where appointed counsel's appearance is immediately necessary to protect an in-custody defendant's liberty interest, e.g., arraignments for felony absconders or when assigned counsel fails to appear in court. When new or replacement counsel is immediately necessary, the district court shall notify Trial Court Services who shall then appoint an attorney from a separate region-based district court attorney roster.
- B. Counsel approved to serve under this section shall be available to appear in district court within 30 minutes of attempted contact from Trial Court Services or the assignment is deemed declined. Attorneys who decline or are unavailable for an appointment are placed at the bottom of the rotational list and the availability of the next attorney on the roster shall be determined.
- C. Counsel approved to handle tier 1, 2, 3, or 4 cases under this Order may also sign up with Trial Court Services for specific district courts. Sign up for these appointments shall include counsel's mobile telephone number.
- D. Trial Court Services shall ensure attorneys are appointed for offenses for which they are tier approved and eligible.

E. The district courts are encouraged to notify Trial Court Services if assigned counsel has displayed a history of failing to appear in court.

Dated: February 11, 2020



Honorable Timothy M. Kenny, Chief Judge
Third Judicial Circuit of Michigan

Date Approved by SCAO: February 25, 2020