

OAKLAND COUNTY INDIGENT DEFENSE PROGRAM

POLICY AND PROCEDURES

POLICY

On October 29, 2020, the Michigan Department of Licensing and Regulatory Affairs formally approved Michigan Indigent Defense Commission Act Standard 5 – Judicial Independence for implementation by all court funding units in the State. Standard 5 requires that Oakland County, as the funding unit for the Oakland County Circuit Court, manage and operate the indigent defense program (“IDP”) for the Circuit Court. Circuit Court Judges may, however, participate in evaluating attorney qualifications and performance and may offer suggestions for the operation of the IDP.

In response to Standard 5, the County has created an Indigent Defense Services Office (“IDSO”), which is managed by a Chief Attorney. The employees of the IDSO are County employees, but they report to the County Executive rather than the Circuit Court.

In order to fully implement Standard 5, the IDSO finds it necessary to set forth policies and procedures for selecting, appointing, monitoring the performance of, and compensating counsel who represent indigent adults charged with crimes in the Oakland County Circuit Court, for the review of certain decisions made by the Chief Attorney of the IDSO, and for the maintenance of records of appointment activity.

The Chief Attorney of the IDSO and his/her designee(s) is responsible for the management and operation of this Policy and the Procedures set forth herein. The effective date of this document is **December 2, 2021**. These policies and procedures replace any and all prior policies and procedures of the Oakland County Circuit Court Criminal Assignment Committee, and any such prior policies and procedures are null and void upon the effective date of this document.

PROCEDURES

I. CRIMINAL ASSIGNMENT COMMITTEE

1. The Criminal Assignment Committee (“CAC”) will consist of eleven members. The Chief Attorney will serve as the Chairperson of the CAC and is a voting member. If there are other attorneys employed by the IDSO, the Chief Attorney may designate one of those attorneys as his/her designee for one or more CAC meetings.

Five of the members of the CAC will be attorneys appointed by the President of the Oakland County Bar Association (OCBA), and these attorneys will be voting members. The five attorney members serving on the CAC as of the effective date above will continue to serve the remainder of their current two-year term and may be re-appointed to further two-year terms in the discretion of the OCBA President.

Five of the members of the CAC will be Judges from the 6th Circuit Court, and these Judges will be appointed by a method determined by the Bench of the 6th Circuit Court. In order to comply with MIDC Standard 5, the five judicial members will be non-voting members. The five judicial members serving on the CAC as of the effective date above will continue to serve the remainder of their current two-year term and may be re-appointed to further two-year terms in the discretion of the 6th Circuit Court Bench.

Though they may not vote, the five judicial members are integral members of the CAC and will be “permitted and encouraged to contribute information and advice concerning the delivery of indigent criminal defense services, including their opinions regarding the competence and performance of attorneys providing such services,” as provided in Section B of Standard 5.

2. The IDSO will maintain a list of attorneys eligible to be assigned to represent indigent adults charged with felonies in Oakland County. This list will be known as the “appointment list,” the “attorney roster,” or the “roster.”

The CAC will review the qualifications of attorneys applying to be added to the roster and will determine, by majority vote, the category placement level for each applicant.

The CAC will use the same procedure to determine whether a roster attorney should be moved to a different category level.

The CAC will also be responsible for establishing any training and continuing legal education requirements, in addition to those set forth by MIDC Standard 1, for roster attorneys. The CAC members will also participate in the other functions described herein.

3. The criteria, standards, and policies of the CAC will be available for inspection at the office of the IDSO and on the IDSO website.
4. The CAC will also hear and decide appeals of the Chief Attorney's denials of any requests by a roster attorney for investigator assistance, expert witness assistance, or extraordinary fees.
5. A quorum of the CAC is required at meetings for application reviews and category placements, petitions for reclassification, review of complaints, and appeals of decisions of the Chief Attorney. A quorum is defined as a majority of the members eligible to vote. A majority of those members present and eligible to vote is required to transact business.
6. Meeting minutes and vote totals for any issue requiring a vote by the CAC will be recorded.
7. All petitions and complaints, including records of disposition of such items by the CAC will be kept on file in the IDSO. Records regarding attorneys who were approved to receive appointments but who never completed the requirements needed to be added to the roster will be kept for one year and then discarded. Copies of IDSO office records will be available to the applicant, the complainant, the attorney named, and Committee members and staff. Records will be available to the public by making a request under the FOIA.
8. The CAC does not discriminate against any applicants or members on the basis of race, color, religion, national origin, age, sex, height, weight, sexual orientation, gender identity, marital status, partisan considerations, or disability under the Elliott-Larsen Civil Right Act, 1976 PA 453, MCL 372101 to 37.2804, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq, and the Americans with Disabilities Act of 1990, 42 U.S.C §12101 et seq.

II. ELIGIBILITY TO SERVE AS ASSIGNED COUNSEL

1. As determined by the CAC, each felony case will be categorized for purposes of this appointment system. Felony cases are classified in the following categories, based on the maximum penalty of the most serious underlying criminal charge. Habitual Offender status is not considered when determining category placement:

Category	Description
1	Capital offenses – maximum sentence of life.
2	Major felony offenses – maximum sentence <u>more than</u> 5 years but less than life.
3	Felony offenses – maximum sentence more than 2 years, up to and <u>including</u> 5 years.
4	Felony offenses – maximum sentence up to 2 years (including “High Misdemeanors”).

The CAC will determine each roster attorney’s appropriate category placement. Category 1 attorneys are eligible to receive assignments in all categories. Attorneys in category 2 are also eligible to receive assignments in categories 3 and 4. Attorneys in category 3 are also eligible to receive assignments in category 4.

Any attorney approved by the CAC, regardless of category, is eligible to receive assignments for Probation Violation hearings, bench warrant arraignments, Oakland County Jail arraignments, and lineups.

2. Eligibility to serve as assigned counsel will be determined as follows:
 - a. Attorneys seeking to be added to the roster must submit a complete application form which will be available in the office of the IDSO and on the IDSO website.

- b. The Chief Attorney will forward all received applications to the CAC. The CAC will review the application and determine the applicant's qualifications to serve as assigned counsel in any one or all of the categories of criminal cases. Applications will be reviewed at least twice annually at CAC meetings. Additional meetings may be called at the discretion of the Chief Attorney or his/her designee.
- c. Newly added roster attorneys must complete all MIDC Continuing Legal Education ("CLE") requirements. They must also complete the Mentor Program, and any other training programs or education as determined by the CAC. Applicants who qualify for placement in either Categories 1 or 2 are not required to complete the Mentor Program.
- d. Attorneys may be qualified to receive Category 3 and 4 appointments upon the following: 1) completion of the training program set forth in paragraph c. above; 2) participation in the Criminal Mentor Program; and 3) instruction on Adult Treatment Court qualifications and procedures; or 4) as otherwise determined by the CAC.
- e. The CAC will develop and produce a performance survey to allow for feedback from the judiciary regarding assigned attorneys. The CAC will consider this feedback along with the attorney's experience, participation in criminal law training programs, and other law-related criteria in determining the continued eligibility of attorneys to serve as assigned counsel for indigent defendants.
- f. Initial placements and categorical placements as a result of petitions for reclassifications will be based upon a weighted scoring system, including but not limited to such criteria as criminal trial experience, criminal law education, participation in the Oakland County Mentor Program, second chair experience, and other relevant information as determined by the CAC. The point values for the weighted scoring system will be available in the IDSO office and on the IDSO website.
- g. An attorney may petition the CAC for reclassification by submitting a written request to the Chief Attorney outlining the reasons for reclassification, including, but not limited to, increased experience, completion of various training programs, recommendation from judges and attorneys, second chair experience, and any other information relevant to an appropriate classification.

A Petition for Reclassification form will be available in the IDSO office and on the IDSO website for attorneys who wish to apply for reclassification. A completed petition may be filed with the Chief Attorney at any time during the year. The CAC will review petitions at least twice annually. Additional meetings may be called at the discretion of the Chief Attorney or his/her designee.

Neither the IDSO, nor the CAC, will automatically move attorneys to a higher category. It is the attorney's responsibility to file a Petition for Reclassification.

- h. To remain eligible for the criminal assignment system roster, all attorneys must annually present evidence of their completion of MIDC CLE requirements by December 31st each year. Attorneys who fail to submit CLE evidence by December 31st will be automatically removed from the roster of appointed counsel. Attorneys may petition the CAC for reinstatement. The petition must include evidence of completion of all MIDC CLE requirements for the current year.

III. COMPLAINTS AGAINST ATTORNEYS, SUSPENSION, OR REMOVAL

An attorney's appointment to the roster is a privilege and not a right. An attorney on the roster has no right or interest in remaining on the roster. An attorney on the roster may be suspended and/or removed pursuant to the following procedures.

1. A complaint must be in writing and submitted to the IDSO. The Chief Attorney or other IDSO staff may file a complaint. The following are some non-exclusive reasons for filing a complaint against an attorney: false representations in the application, misrepresentations in court, chronic refusals to take appointments, failure to attend court dates, chronic tardiness, substance abuse, inadequate representation, disruptive or disrespectful courtroom behavior, contempt of court, notice of disciplinary action taken by the State Bar or any other State, federal or local Bar Association, and any criminal conviction in a local, state or federal court.
2. When a complaint is filed, the IDSO will immediately notify the Chief Attorney and provide him/her with a copy of the complaint. A copy will also be sent to the named attorney.

3. Upon receipt of the complaint, the Chief Attorney will review the complaint and determine if it should be dismissed or submitted to the CAC for review. The Chief Attorney may immediately suspend the named attorney from receiving appointments if, in the Chief Attorney's judgment, such action is warranted. The Chief Attorney will report this action to the CAC immediately.
4. If the Chief Attorney determines that the complaint is meritless and should be dismissed:
 - a. The Chief Attorney will notify the person who submitted the complaint, and the named attorney, that the complaint was dismissed.
 - b. For informational purposes, the Chief Attorney will inform the CAC members of the complaint and dismissal by email, or at the CAC's next regularly scheduled meeting.
5. If the Chief Attorney believes that the complaint may have merit and should be reviewed by the CAC:
 - a. Within 14 days of receipt of the complaint the Chief Attorney will notify the members of the CAC of the complaint.
 - b. The Chief Attorney will schedule a CAC meeting not more than 60 days after receipt of the complaint, which date can be rescheduled by the Chief Attorney for good cause. All complaints will be reviewed by the CAC within 180 days unless there is good cause to extend that period of time.
 - c. The Chief Attorney will notify the named attorney of the complaint and invite him/her to submit a written response within 21 days. This submission date may be extended at the discretion of the Chief Attorney upon the written request of the named attorney.
 - d. The Chief Attorney will distribute the named attorney's written response, if any, to the members of the CAC in advance of the meeting at which the complaint will be reviewed.

- e. The named attorney may be invited to attend the meeting if the CAC requests a further inquiry with the attorney. The named attorney has no vested right to attend the meeting absent an invitation to do so from the CAC.
- f. The CAC may invite any persons who may have information bearing on the determination of the complaint to the meeting. If the CAC determines that it will hear oral testimony from any person who is not a CAC member, the CAC will invite the named attorney to give oral testimony as well. The oral testimony will not be given in an adversarial format, and the named attorney will not be permitted to cross-examine any other persons.
- g. The CAC will dispose of the complaint by majority vote. The CAC's decision is final and binding.
- h. The Chief Attorney or his/her designee will notify the person who submitted the complaint and the named attorney of the action taken by the CAC.

IV. PROCEDURES FOR APPOINTING COUNSEL

1. Upon receiving a request for appointment of counsel the IDSO will refer to the list of attorneys eligible to handle the type of offense with which the defendant is charged. Upon confirming the availability of the next attorney on the list, notice of that appointment will be submitted to the District Court in which the appointment has been requested as well as to the appointed attorney.
2. Counsel will be appointed in rotation according to the date of their last appointment. Each assignment category will have a separate rotational list. An attorney who is unavailable for an assignment will not lose his/her place on the rotational list. After refusing a third appointment, the attorney will lose his/her place and be moved to the bottom of the rotational list. The Chief Attorney will notify the CAC if an attorney chronically refuses appointments.

3. An attorney will be removed from the appointment roster(s) for failure to accept an assignment within 90 days from the attorney's last appointment. An attorney removed for failure to accept appointments may request reinstatement in writing. The CAC must approve reinstatement before appointments can resume.
4. The Chief Attorney or his/her designee may remove a case from the rotational system and may appoint the case to another roster attorney at the designated level only in rare cases where the unique skills and abilities of that attorney are required to defend the case. The Chief Attorney must make a reasonable effort to consult with the assigned Judge of record on the case and will consider the recommendations and comments of the Judge before making the non-rotational appointment. Any non-rotational appointment will be reported to the CAC at its next meeting. A list of non-rotational appointments will be maintained by IDSO staff.
5. In unusual or exigent circumstances, a Judge handling a criminal case, where the appointed attorney is unavailable or otherwise not present, may contact the IDSO for the temporary appointment of another rostered attorney at the designated level for the case. All such appointments will be recorded by IDSO staff.
6. Probation violations, infectious disease petitions, line-ups, emergency petitions, extradition cases, and other similar miscellaneous matters are specifically excluded from the above-described rotational system. The IDSO will select attorneys from the roster for these assignments.
7. An attorney may apply for inactive status for up to six months for compelling reasons such as medical, family issues, or other appropriate reasons. The attorney must file a request with the IDSO. The request will be considered at the next CAC meeting. In appropriate circumstances the Chief Attorney or his/her designee may grant temporary inactive status pending the next meeting of the CAC.

V. COMPENSATION

1. Attorneys must submit payment vouchers in a format approved by the IDSO. This format is subject to change at the discretion of the Chief Attorney and may include a web-based electronic submission. The attorney will be compensated pursuant to the IDSO Appointed Attorney Fee Schedule. The fee schedule is available in the IDSO office and on the IDSO website.

VI. APPEAL OF DECISIONS OF THE CHIEF ATTORNEY

1. The CAC will hear and decide appeals of the Chief Attorney's decision to deny (including a partial denial) a roster attorney's request for an investigator, an expert witness, or extraordinary fees.
2. The roster attorney must file a written request to appeal the Chief Attorney's decision with the Chief Attorney, who will forward the request for appeal to the CAC. The roster attorney must include any additional documentation he or she wishes the CAC to consider, and the Chief Attorney will forward this information to the CAC. The CAC will consider all documentation included with the request for appeal and may consider any additional documentation in its sole discretion.
3. For appeals of investigator or expert witness denials, the Chief Attorney will schedule an emergency CAC meeting not more than 10 days after receipt of the written appeal request and all appeals of this nature must be decided within 14 days, absent good cause.
4. For appeals of extraordinary fee denials, the Chief Attorney will schedule a CAC meeting not more than 45 days after receipt of the written appeal request and all appeals of this nature must be decided within 60 days, absent good cause.
5. The roster attorney may be invited to attend the meeting if the CAC requests further information from the attorney. The roster attorney has no vested right to attend the meeting.

6. The CAC will review the Chief Attorney's decision for abuse of discretion and will decide the request for appeal by majority vote. The Chief Attorney will abstain from voting on any appeals. If the vote results in a tie, the Chief Attorney's decision is upheld.

VII. COMPILATION OF DATA

1. The IDSO will annually compile and maintain the following records:
 - a. The number of appointments given to each attorney; and
 - b. The total amount of public funds paid to each attorney.

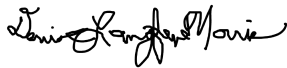
Reviewed and approved by the Chief Attorney, Oakland County Indigent Defense Services Office, on December 2, 2021.

12-2-21

Peter Menna, Chief Attorney

Date

Reviewed and approved by the Oakland County Criminal Assignment Committee on December 2, 2021.



Hon. Denise Langford-Morris

Date