

**I. SCOPE**

This Administrative Order is issued in accordance with MCR 8.123 and Administrative Policy Memorandum 2003-05 from the State Court Administrative Office. This order sets forth the plan for selecting, appointing, compensating and monitoring the performance of attorneys who are appointed by the Oakland County Probate Court to represent indigent respondents in mental health commitment matters and in any guardianship matter (legally incapacitated individual or developmentally disabled person) in which an attorney advocate is required by statute or court rule, and for the maintenance of records of appointments and compensation. The previous Oakland County Probate Court Administrative Order 2004-03 is rescinded.

**II. SELECTION CRITERIA AND PERFORMANCE REVIEW PROCEDURE**

- A. Attorneys seeking appointment are encouraged to take training from the Oakland County Bar Association (OCBA) or other provider. Attorneys must be familiar with all relevant Mental Health and EPIC provisions and court rules.
- B. The OCBA will certify a list of attorneys who have completed any training and provide the list to the court at least once a year.
- C. Attorneys must submit an application to the court. The application will be available from Probate Court Administration.
- D. A committee consisting of court personnel, including at least one member of the Probate Bench, will review the applications based on objective standards.
- E. The committee may develop a ratings form for use by the Probate Judges to assess the performance of attorneys who are on the list or are seeking inclusion on the list.
- F. The committee will certify an approved list of attorneys who are eligible for appointment. The list will designate whether an attorney is certified to receive appointments in “mental health,” “guardianship” or both.
- G. The committee must meet at least once a year to:
  - 1) Consider new applications of attorneys seeking appointment
  - 2) Investigate and review concerns raised by way of the application or performance
  - 3) Prepare an updated list
- H. Attorneys who are removed from the list will be notified in writing. Aggrieved attorneys may provide the committee with additional documentation that the committee may choose to consider, including additional experience, training, second chair experience, or any other relevant information.

### **III. APPOINTMENT PROCESS**

- A. Probate Court Administration will distribute the approved list of attorneys who are eligible for appointment to each Probate Judge and Mental Health office.
- B. Only attorneys whose names appear on the current approved list may be appointed.
- C. For mental commitment matters, an appointment clerk or Mental Health unit staff member will appoint attorneys on a strictly rotational basis (contingent on availability).
- D. For guardianship matters, an appointment clerk will appoint attorneys on a strictly rotational basis (contingent on availability). If an appointment is terminated, and a new petition requires reappointment of an attorney, an appointment clerk will appoint the same attorney to promote consistent expert representation.
- E. For appeals, an appointment clerk will appoint attorneys on a strictly rotational basis (contingent on availability).
- F. Attorneys must accept the appointment at the time of the initial telephone contact from court staff; otherwise their names will be skipped until the next rotation through the list.
- G. Deviation from the rotational basis of appointment is appropriate only for good cause, including immediate availability due to the emergency nature of the proceeding, requirement of specific expertise, or similar reasons.
- H. The appointed attorney must personally appear at all hearings except and as approved by the judge.
- I. For Mental Health matters, each attorney (with the exception of cases to be heard at Caro Center) will receive an approximate one-third of the scheduled docket for the week they are appointed to cover.

### **IV. COMPENSATION METHOD**

Compensation for counsel for indigent parties shall be made according to the established Oakland County Attorney Fee Schedule.

### **V. MAINTENANCE OF RECORDS**

- A. The Business Division will maintain records of all non-Mental Health appointments made. If there has been a deviation from appointing on a rotational basis, the reason for the deviation will be included.
- B. The Mental Health office staff will maintain records of all appointments made. If there has been a deviation from appointing on a rotational basis, the reason for the deviation will be included.
- C. The Business Division will maintain records of the appointments made by the court to each attorney, and the total public funds paid to each attorney by the court.

- D. The Business Division will maintain records of the appointments made by each judge of the court to each attorney, and the total public funds paid to each attorney for the appointments by each judge of the court.
- E. The Business Division will compile an annual report which includes:
- 1) The number of appointments given each attorney.
  - 2) The number of appointments given each attorney by each judge
  - 3) The total public funds paid each attorney for appointment in the court
  - 4) The total public funds paid each attorney for appointments by each judge of the court
- F. All records so maintained will be made available to the public upon request. There shall be no charge for inspecting the records, but a reasonable fee will be charged for providing copies pursuant to MCR 8.119(E).
- G. Upon request from the State Court Administrator, the Probate Court Administrator shall provide a copy of the most recent annual report, or data on an individual attorney or judge for a period specified in the request.
- H. The records required under this section shall be maintained pursuant to SCAO General Schedule 16.

#### IV. IMPLEMENTATION AND EFFECTIVE DATE

- A. This Administrative Order shall be sent to the State Court Administrator for approval and shall be effective for all mental health petition hearings scheduled to be heard on or after October 6, 2008, unless stayed or revoked by action of the State Court Administrator in accordance with MCR 8.112(B)(3).
- B. The Chief Probate Judge and Probate Court Administrator are responsible for administering the plan.

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Date

7/14/08

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Chief Probate Judge

*Elizabeth Peyton*