

Twelfth Judicial Circuit Article V Indigent Services Committee

POLICIES AND PROCEDURES FOR APPOINTMENT OF COUNSEL

Effective October 1, 2004

(Updated 11/1/06)

Chapter 27, Florida Statutes, creates the Circuit Article V Indigent Services Committee (hereafter the “Committee”). The Committee is responsible to compile a registry of lawyers who may be appointed to represent indigent persons in cases which require court appointment of private counsel. The Committee consists of: the Chief Judge; the Public Defender; an experienced private criminal defense lawyer¹; and an experienced private civil lawyer. Service on the Committee bars the private lawyers from serving as court-appointed lawyers during the term of the lawyer’s service on the Committee.

Lawyers may be appointed to represent indigent persons only if they are approved by the Committee for inclusion on the registry.

The Committee recognizes that the practice of criminal law and dependency law has become increasingly complex. Selection of lawyers for appointment to criminal and dependency case shall hereafter be based on qualifications, training and evaluation of performance.

STANDARDS AND PROCEDURES FOR THE COMMITTEE

The Committee shall meet at such times and places as are fixed by the chairperson. Three members must be present to constitute a quorum. All Committee meetings shall comply with Florida’s public meetings laws.

The Committee shall: 1) screen and certify applicants for appointment in appropriate cases; 2) investigate complaints and recommend sanctions; 3) perform such other acts as may be necessary to fulfill the Committee’s statutory responsibilities. These responsibilities may be delegated to subcommittees; however, the role of subcommittees shall be advisory only. All final determinations regarding certification, re-certification, de-certification, sanctions, and other matters relating to a lawyer’s qualifications to serve, or continue to serve, as counsel for indigent persons shall be the sole responsibility of the Committee.

STANDARDS FOR COURT APPOINTED COUNSEL

¹ The Twelfth Judicial Circuit Committee includes two private criminal defense lawyers, because both Manatee and Sarasota Counties have active chapters of the Florida Association of Criminal Defense Lawyers. It is believed that having criminal defense lawyers from both FACDL chapters better insures that the interests of all criminal defense lawyers in the circuit are represented.

Certification

Lawyers must be certified by the Committee to be eligible for appointment by a judge and to receive compensation from the State of Florida.

Lawyers seeking selection and approval shall submit a completed application form and provide such additional information as the Committee may require. Applications shall be delivered to the Office of the Court Administrator who shall forward them to the Committee. The Committee shall review the applications and certify lawyers for inclusion on appropriate registries. The Committee shall conduct an annual review of applications for certification or re-certification.

The Committee will promptly notify applicants of its decision regarding their certification or re-certification, including the categories of cases for which the applicant has been certified. Upon request by an excluded lawyer, the Committee will give the reason(s) for the exclusion and the method by which the excluded lawyer may seek review of the decision or re-apply for certification.

Each lawyer certified by the Committee shall annually submit proof of compliance with the Continuing Legal Education requirements for court appointed counsel. In addition, each certified lawyer will be subject to a review of his or her professional performance every three (3) years. The standard for this review shall be whether the lawyer has provided high quality representation and continues to meet the minimum requirements for certification.

De-certification

De-certification means the exclusion or removal of a lawyer from the list of lawyers eligible for appointment by the court.

A lawyer shall be excluded from certification if the lawyer:

1. is disbarred or suspended, or surrenders his/her license to practice law in this state; or
2. fails to meet the experience or training requirements established by the Committee;
3. misapplies or misappropriates client property;
4. submits false or fraudulent billing;
5. solicits or receives compensation directly from the client(s) for the case(s) to which the lawyer has been appointed;
6. brokers cases.

A lawyer may be excluded from certification if the lawyer:

1. unreasonably fails to consult with the client;
2. fails, without cause, to make required court appearances;

3. fails, without cause, to meet statutory or court-imposed deadlines;
4. fails, without cause, to file appropriate motions;
5. engages in misconduct where the Committee determines de-certification to be necessary for the protection of clients' interest and/or the administration of justice;
6. fails to zealously represent the interests of a client.

Procedure for De-certification

Any interested person may request, in writing, that a certified lawyer be removed for cause. Upon receipt of such a request, the Committee may conduct such investigation as it deems necessary to substantiate or refute the basis for the request. The lawyer may be requested to respond to the request, in writing or in person, or both. The Committee may conduct a hearing and receive testimony regarding the request and the lawyer's response. Any hearing shall be noticed in accordance with Florida's public meeting laws. Upon a finding of cause, the Committee may suspend the certification of the lawyer, de-certify the lawyer, or impose such other sanctions as the Committee determines to be appropriate. The Committee shall render its decisions promptly. The Committee shall notify the lawyer, and the person filing the request for removal, of its decision in writing.

Any lawyer who is disbarred or suspended; or who surrenders his/her license to practice law in this state; or who is otherwise the subject of disciplinary action by the Florida Bar, must promptly notify the Committee in writing of the action taken against him/her or the surrender of his/her license. The Committee shall immediately remove from rotation any lawyer who has been disbarred or suspended, or who surrenders his/her license to practice law. The Committee may remove from rotation any lawyer against

whom the Florida Bar has brought disciplinary action, pending final resolution of the disciplinary action.

Any lawyer who has criminal charges pending against him/her, or who is the subject of a criminal investigation, shall immediately notify the Committee, in writing, of the pending charges and/or investigation. The Committee may remove from rotation any lawyer against whom there are pending criminal charges, or who is the subject of a criminal investigation, pending final resolution of the criminal charges or criminal investigation.

De-certification shall be for a specified period.

Lawyers may be permanently excluded from certification or re-certification for the reasons set forth herein. However, an excluded lawyer may be restored to certification upon written application to the Committee and demonstration that the basis for the exclusion no longer exists.

Penalties Other Than De-certification

Penalties other than de-certification shall range from counseling to suspension from rotation. Suspension shall be for a specified period of time.

ASSIGNMENT OF CASES

General

Court Administration will maintain the registry of approved lawyers and provide the registry to each judge. Assignment shall be in rotation in the order in which lawyers' names appear on the applicable registry, unless the court makes a written finding of good cause for making an appointment out of rotation. If a judge makes an appointment out of

rotation, the lawyer who otherwise would have received the appointment shall receive the next appointment by the court.

Lawyers approved for appointment shall be responsible to notify the Committee of any of the following:

1. change of address, telephone number or fax number;
2. change in the categories of cases to be assigned to him or her;
3. disciplinary action taken against him/her by the Florida Bar;
4. that he or she has become inactive, has moved his/her office from the circuit, or is unavailable for appointment.

Lawyers accepting appointments to represent indigent persons shall be required to conduct meetings with the indigent client at a location within the county in which the case is filed. For example, if the lawyer is appointed to represent a client in a case filed in Desoto County, the lawyer shall be required to make provision to hold meetings with the client in Desoto County, regardless where the lawyer resides or maintains his or her professional offices. This provision is not intended to prevent the lawyer from communicating with the client by telephone or mail. This provision is intended to apply to meetings or conferences where the client is required to be physically present with the lawyer.

Lawyers accepting appointments may be assisted by other lawyers who have been certified for appointment by the Committee. Such assistance shall be rendered only with the express consent of the client and the express approval of the presiding judge.

Certification Criteria

Definitions

- A. **CLE Requirement** – continuing legal education approved by the Florida Bar.
- B. **Complex Appellate Cases** – those cases certified by the trial counsel (either prosecution or defense) as involving extended litigation or novel or especially complicated issues of fact or law.
- C. **Criminal Law** – the practice of law dealing with the defense and/or prosecution of misdemeanor and felony crimes in state and federal trial and appellate courts.
- D. **Lead Counsel** – The lawyer with primary responsibility for preparation and presentation of the case.
- E. **Percent of Practice** – Applicant’s determination of the amount of work or time devoted to the applicable area of law during the preceding 12 months. To be expressed as a percentage of the applicant’s overall practice.
- F. **Second Chair in Capital Murder Cases** – A lawyer who may be appointed to assist lead counsel, upon certification by lead counsel, not sooner than 60 days following appointment of lead counsel, that a good faith basis exists to believe that the State will not waive the death penalty and the case will be proceeding to trial. Second Chair counsel shall be selected from the registry of lawyers designated as qualified to serve as second chair counsel in capital cases. The appointment of second chair counsel shall be treated as an appointment in all respects, including counting the second chair appointment as the appointed lawyer’s turn in the registry rotation.
- G. **Trial** – A case tried to a judge or jury through the state’s case in chief.
- H. **Second Chair** – A lawyer assisting the lead lawyer who does not have primary responsibility for the preparation or presentation of the case, but who does in fact actively participate in the preparation and presentation of the case. Active participation shall be certified by lead counsel in the case.

Attorney Qualifications

An attorney is generally qualified to be certified if his/her principal office is in the Twelfth Judicial Circuit²; if he/she is a member in good standing of the Florida Bar; and if he/she meets the following standards:³

<u>Length of Bar Membership</u>	<u>CLE Requirement</u>	<u>Per Cent of Practice</u>	<u>Trial⁴ Experience</u>
ADULTS			
1. Misdemeanors			
One year	10 hours of Criminal Law during the preceding 12 months months	N/A	3 jury or non-jury trials; or observed 2 trials and 2 sentencing hearings and certified by the lawyer handling the cases observed
2. Third and Second Degree Felonies			
Two years	10 hours of Criminal Law during the preceding 12 months months	N/A	5 criminal trials, 2 of which are felony jury trials as either lead counsel or second chair
3. First Degree Felonies, Life Felonies,			

² Lawyers appointed to represent indigent persons in Desoto County often maintain their professional offices in the 20th Judicial Circuit, particularly in Charlotte County. Geographic considerations require that the Committee permit inclusion of lawyers who reside in the 20th Circuit on the registry of lawyers qualified for appointment to Desoto County cases. Therefore, any lawyer practicing in the 20th Circuit may apply for appointment in cases filed in Desoto County.

³ Notwithstanding the standards for length of bar membership, any lawyer who is otherwise qualified may petition the Committee for a special exception and demonstrate that the length of bar membership should be waived. Upon the making of such a petition and demonstration by the interested lawyer, the Committee may waive the required length of bar membership.

⁴ Trial shall mean “through completion of the State’s case in chief.”

**Capital Sexual Battery Cases;
First Degree Murder Cases Where
The Death Penalty Has Been Waived
At the Time of Appointment; and Cases
Under Part V, Chapter 394 (Civil
Commitment of Sexually Violent
Predators)**

5 years	10 hours Criminal Law during preceding 12 months	50%	15 criminal trials, 10 of which shall be jury trials and at least 5 of the jury trials in felony cases
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**4. Capital Cases Where the Death Penalty
Has Not Been Waived At the
Time of Appointment**

Counsel appointed as lead counsel or co-counsel in Capital Murder cases must satisfy the criteria and requirements of Rule 3.112(f) and (g), Rules of Criminal Procedure.

JUVENILES - DELINQUENCY

1. Misdemeanors

1 Year	10 hours Criminal Law during the preceding 12 months	N/A	3 delinquency trials or state or federal jury or non-jury trials, or observed 2 trials and 2 disposition hearings (certified by the lawyer handling the cases).
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2. Third and Second Degree Felonies

2 years	10 hours Criminal Law during the	N/A	5 delinquency trials or state or federal jury or non-jury criminal trials
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preceding 12
months

3. First Degree and Life Felonies

3 years	10 hours Criminal Law during the preceding 12 months	50%	10 trials, at least five of which are felonies, and five of which are delinquency trials
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JUVENILE – DEPENDENCY AND TERMINATION OF PARENTAL RIGHTS

5 years	10 hours including at least 3 hours earned at Dependency Court Improvement Summit within preceding 18 months	25%	Lead counsel in at least 5 dependency trials and 5 termination of parental rights cases during the preceding 3 years; <u>or</u> served as contract dependency/TPR lawyer in Sarasota or Manatee County for at least one year preceding application ⁵
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APPELLATE CASES

1. Misdemeanor and Third Degree Felony Appeals

2 years	10 hours Appellate Law	N/A	Three criminal appeals or five criminal trials
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⁵ If court appointed counsel becomes unable to maintain the continuous representation of all indigent clients in his/her caseload, or if the presiding judge requests an increase in number of court appointed counsel due to increased filings, a lawyer who does not meet all the foregoing criteria may be approved by the Committee for inclusion in the registry if the lawyer seeking appointment agrees to meet the criteria within the times specified and is mentored by one or more registry lawyers for not less than sixty (60) days.

or a combination
of 5 hours
Appellate Law
and 5 hours
Criminal Law

2. All Other Non-Capital Appeals⁶

3 years	10 hours Appellate Law	N/A	Five criminal appeals or 10 criminal trials, at least five of which are felonies, and three criminal appeals
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**3. Cases Certified By Trial Counsel
As Being Complex And Appeals
Under Part V, Chapter 394,
Involuntary Commitment of
Sexually Violent Predators**

4 years	10 hours appellate criminal law in the 12 preceding months	33%	Five criminal appeals, at least three of which are Category 2 appeals
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**4. All Cases In Which The Death
Penalty Has Been Imposed**

5 years	10 hours criminal appellate law in the 12 preceding months; 12 hours defending capital cases in the 24 preceding months	33%	Five years experience in criminal law; one prior appeal in a death penalty case; prior experience as lead counsel in three felony appeals, at least one of which involved a murder conviction; or, prior experience as lead counsel
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⁶ Excepting cases certified by trial counsel as being “complex.”

in the appeal of six felonies,
at least two of which
involved murder convictions

**5. Appellate Dependency or Termination
Of Parental Rights Cases**

2 years	3 hours at the Dependency Court Improvement Project Conference, or an equivalent in the 12 preceding months	25%	Three years experience in dependency or appellate law and must have been lead counsel in at least three contested dependency trials and three contested termination of parental rights trials or demonstrate knowledge through the practice of family law; or served as a contract dependency/TPR lawyer in Sarasota or Manatee County for at least on year preceding application.
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GUARDIANSHIP CASES⁷

3 years	8 hours Guardianship education class or 6 hours in one or more Florida Bar Guardianship courses in the preceding 3 years	N/A	Represented a party in at least 5 guardianship cases in the preceding three years
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⁷ Includes cases brought under Chapter 393 and Chapter 744, Florida Statutes, and any other case brought under provisions of law which require appointment of counsel for due process purposes and which are required to proceed in the same manner as a guardianship proceeding.

TUBERCULOSIS CASES
(Chapter 392, Florida Statutes)

The presiding judge in such cases shall have discretion to determine whether a particular lawyer possesses the qualifications necessary for appointment.

SUBSTANCE ABUSE SERVICES CASES
(Chapter 397, Florida Statutes)

The presiding judge or magistrate in such cases shall have discretion to determine whether a particular lawyer possesses the qualifications necessary for appointment.

ATTORNEY FEES AND COSTS

Billing procedures for attorney fees and costs shall be as promulgated by the Justice Administrative Commission. The rates of compensation for attorney fees shall be as follows:

1. Criminal Cases – Counsel shall be compensated in accordance with the provisions of Administrative Order No. 2004-14.3.
2. Dependency/Termination of Parental Rights Cases –
The 12th Circuit Indigent Services Committee (ISC) shall advertise for attorneys to be selected for annual contracts which will be for an amount set by the ISC. For Fiscal Year 2006-2007, the rate shall be \$120,000 per year paid in monthly installments of \$10,000.00 to each attorney selected by the ISC to work in Manatee or Sarasota counties. The annual contracts for attorney services will include all work done on dependency and termination of

parental rights cases, including appeals. All cases assigned to any attorney not selected by the ISC prior to June 30, 2006 will transfer to one of the attorneys selected, unless the dependency case has been arraigned but not yet had a disposition hearing. Those cases will stay with the original attorney until the disposition hearing is concluded. The original attorney will then be entitled to the fee for that stage and will then transfer the case to one of the selected attorneys. Beginning July 1, 2006, attorneys not under annual contract shall be paid according to the following:

- a. Cases Assigned prior to October 1, 2004 - \$90.00 per hour for all services rendered after September 30, 2004.
- b. Cases Assigned beginning October 1, 2004 – Flat fees⁸ of \$1,250.00 per case for dependency cases; \$1,000.00 per case for termination of parental rights cases; \$2,500.00 per case, for appeals. Flat fees may, at the option of the appointed lawyer, be prorated for billing purposes, and billings submitted, on occurrence of the following events: Upon entry of an order of disposition as to the parent being represented - \$500.00; Upon conclusion of a 12 month permanency review - \$500.00; and Following a judicial review hearing - \$250.00. If the flat fee dependency case is resolved at any point prior to the one-year review/permanency hearing, the lawyer shall be entitled to the balance of the \$1,250.00 flat fee and shall bill for the balance accordingly. The flat fee for termination of parental rights cases shall be paid as follows:

⁸ Flat fees may be exceeded only if extraordinary representation is required. The presiding judge shall make the determination whether extraordinary representation is/was required. The lawyer shall be compensated at the rate of \$90.00 per hour for extraordinary representation.

appointment - \$500.00; dismissal/entry of final judgment - \$500.00.

The flat fee for appeals shall be paid as follows: appointment – 500.00;
filing of initial brief or answer brief - \$1,500.00; receipt of appellate
decision - \$500.00

- c. Attorneys who are selected under the new alternative annual contract model are hereby re-appointed to the cases that they were appointed to prior to July 1, 2006.

3. Parental Notification cases - \$500 flat fee.

4. Guardianship cases - \$300.00 for routine representation through the review of the initial guardianship reports; and \$200.00 for routine representation in restoration proceedings. If extraordinary representation is required, the lawyer shall be paid \$75.00 per hour for such extraordinary representation. The determination of the necessity for extraordinary representation shall be made by the presiding judge.

5. Tuberculosis cases - \$125.00 per hour, not to exceed \$650.00 per case.

6. Adult Protective Services - \$125.00 per hour, not to exceed \$650.00 per case.

6. Developmentally Disabled Adult - \$125.00 per hour, not to exceed \$650.00 per case.

7. Guardianship Emergency - \$125.00 per hour, not to exceed \$500.00 per case.

8. Substance Abuse Services cases (Chapter 397 F.S.) – A flat fee structure will be used for these hearings with payments as follows:

- a. \$150 for each original petition hearing;
- b. \$125 for each extension hearing or extension renewal hearing (see Florida Statute 397.6975);

- c. \$100 for any other hearing associated with the case (e.g., absconder/contempt hearing).
- d. No costs are billable for work done on substance abuse services cases.
- e. The flat fee payment structure is retroactive to August 1, 2006 and includes any payments not yet paid by the Justice Administrative Commission.

The other categories below are at the rate of \$75.00 per hour In Court and \$60.00 per hour Out of Court:

- Baker Act
- CINS/FINS
- Civil Appeals
- Contempt Proceedings/Civil
- Contempt Proceedings/Criminal
- Criminal Traffic
- Emancipation
- Jimmy Ryce
- Jimmy Ryce Appeals
- Medical Procedures (304.459)
- STD
- TPR (Chapter 63)

COSTS INCURRED BY COURT APPOINTED COUNSEL

Court appointed counsel shall, for all purposes, use the interpreters under contract with the Twelfth Judicial Circuit.

The rates for court reporter services shall be those set forth in Administrative Order No. 2001-08-2. Court appointed counsel shall use the Twelfth Judicial Circuit's court reporting staff, when permitted, for all depositions and court proceedings. If the

Twelfth Judicial Circuit court reporting staff declines to transcribe audiotaped deposition testimony, court appointed counsel may obtain the services of other court reporters or transcriptionists who agree to the rates set forth in Administrative Order No. 2001-08-2.

Costs incurred by court appointed counsel for investigators and expert witnesses shall be as follows:

1. Criminal Cases/Delinquency Cases/Dependency and Termination of Parental Rights Cases.

- a. Investigators - \$40.00 per hour, not to exceed \$800.00 per case.
- b. Psychological Examinations - \$150.00 per exam.
- c. Psychologist Testifying (In Court or Deposition) - \$150.00 per hour for the first hour; \$37.50 each quarter hour thereafter.
- d. Psychologist Waiting to Testify - \$37.50 per quarter hour.
- e. Medical Doctors Testifying (In Court or Deposition) - \$175.00 per hour for the first hour; \$37.50 for each quarter hour thereafter.
- f. Medical Doctors Waiting to Testify - \$37.50 per quarter hour.
- g. Medical Doctors Out of Court - \$100.00 per hour
- h. Other Expert Witnesses Appointed by the Court – Fees to be set by presiding judge, not to exceed \$150.00 per hour.
- i. Copies are billable at \$0.20 per page.

2. In all cases brought pursuant to Chapter 744, Florida Statutes, expert physicians and examining committee members shall be paid as follows:⁹

- a. Physician or psychologist - \$325.00

⁹ These fees shall be paid by the guardian from the asset of the Ward. If the Ward is indigent, these fees shall be paid by the Justice Administrative Commission

b. Committee members (not physician or psychologist) - \$200.00

In cases brought pursuant Chapter 744, these fees are to be paid by the guardian from the assets of the ward. If the ward is indigent, these fees shall be paid by the Court. In cases brought pursuant to Chapter 393, these fees are to be paid by from the general revenue fund of the county in which the person with mental retardation resided at the time the petition was filed.¹⁰

The court may, upon motion filed and served, and notice given to all interested parties – including county in Chapter 393 cases, or the Justice Administrative Commission, in Chapter 744 cases – order additional fees for examining committee members and physicians.

¹⁰ Section 393.11(5)(g).