

**Judicial Council Plan for the Participation of the Private Bar in Court-Appointed Criminal Cases**  
Approved by the N.H. Judicial Council, September 9, 2014

The American Bar Association's Standing Committee on Legal Aid and Indigent Defense was led by a N.H. lawyer when it established the ABA's Ten Principles of a Public Defense Delivery System. Principle Number Two states that "Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar. The private bar participation may include part-time defenders, a controlled assigned counsel plan, or contracts for services. The appointment process should never be *ad hoc*, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction." In keeping with these principles, the Judicial Council established the following plan for the participation of the private bar in the delivery of indigent defense representation:

1. **The Indigent Defense Subcommittee of the Judicial Council (IDS):** The Indigent Defense Subcommittee will ensure that the terms of this plan are carried out by the Council's executive director.
2. **The Conflict Case Administrator (CCA):** As a requirement of its contract with the Council, the Public Defender Program will maintain a Contract Case Administrator Office. The CCA will assign conflict cases in an orderly, fair and transparent manner according to the statutory order of appointment in RSA 604-A:2, II. The Council will provide the CCA with regularly updated lists of approved attorneys. The CCA will coordinate its efforts with the Judicial Council and will consult with the Council prior to making case assignments in Major Crimes cases. The IDS will make appointments in Capital Cases.
3. **The Contract Attorney System:** Pursuant to RSA 604-A:2-b, the Judicial Council will enter into contracts with private attorneys to provide representation in court-appointed criminal and delinquency cases. Contract attorneys must already have acquired the skills and experience necessary to provide competent representation to the indigent accused and must demonstrate real proficiency in the practice of criminal law. The contract period will run annually from July 1 through June 30. Interested lawyers who do not already have contracts may submit applications to the Council for consideration at any time. Applications will be made available on the Council's website. A lawyer who has a contract with the Council for the current year may apply to renew the contract in the next state fiscal year by submitting a contract renewal application. Renewal applications will be sent to the contract attorneys by the Council in April of each year. The Indigent Defense Subcommittee will make decisions about the award of new contracts and renewals in May of each year for the contract period that begins July 1<sup>st</sup>.
4. **The Number of Contracts and Units Awarded Each Year:** The IDS will set a limit on the number of contracts awarded based on the regional projected need for representation in conflict cases. The IDS will set a limit on the number of units awarded under each contract in order to ensure reasonable caseloads. The Council will enter into a sufficient number of contracts to give the CCA enough lawyers in each judicial district to allow the office to allocate cases efficiently and economically.
5. **The Assigned-Counsel System:** Pursuant to RSA 604-A:2, the Council will maintain five lists of attorneys approved to provide representation in indigent cases: a Juvenile Delinquency list, a Misdemeanors and Felonies list, a Major Crimes list, a Supreme Court Appeals list and a Capital Cases list. A lawyer who wishes to receive cases on an assigned-counsel basis may submit an application to the Council to have his or her name placed on one or more lists. Applications will be made available on the Council's website. Assigned counsel may renew their approved status two years from the date of the IDS's last approval. The Council will send a reminder to the lawyer prior to the expiration of the two-year period. There will be no numerical limit placed on the assigned-counsel lists. In extraordinary circumstances, the Council may, with the assent of the IDS, exercise its discretion to request that an attorney who is not on a list accept an appointment to a case. Assigned counsel must already have acquired the skills and experience necessary to provide competent representation to the indigent accused and must demonstrate real proficiency in the practice of criminal law, preferably through experience as a prosecutor, public defender, contract attorney, or private practitioner handling a substantial criminal defense caseload.

## **Judicial Council Eligibility Standards for Assigned Counsel**

The Indigent Defense Subcommittee will make its determinations of eligibility for inclusion of a lawyer on any individual list based on the following standards:

1. The attorney's application must demonstrate that he or she has the experience and the legal skills necessary to independently and reliably provide high-quality representation in the case type.
2. The attorney's references must indicate their confidence in the lawyer's ability to handle the case type independently and reliably and must affirm the attorney's reputation for professionalism.
3. The attorney must possess professional liability insurance in the amount of \$100,000/\$300,000.
4. The attorney must be a member of the New Hampshire Bar.

In addition to the baseline requirements above, eligibility for the Juvenile Delinquency list, the Major Crimes list and the Capital Case list will depend on the lawyer satisfying these criteria:

For the **Juvenile Delinquency Cases list**, the lawyer must have criminal trial experience, must possess a thorough understanding of the juvenile justice system and must demonstrate a comprehensive knowledge of the array of social service resources available to minors locally and regionally.

For the **Major Crimes list**, the lawyer must have practiced law actively for at least three years, (at least a third of the law practice must have involved criminal matters), and the lawyer must have tried at least 5 jury trials as lead counsel as either a prosecutor or defense attorney, with at least one of those trials involving a major crime, (felony sexual assault, first degree assault, or homicide).

For the **Capital Case list**, the lawyer must demonstrate a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases and must show that he or she is eligible for inclusion on the Major Crimes list and possesses:

- substantial knowledge and understanding of the relevant state, federal and international law, (both procedural and substantive), governing capital cases;
- skill in the management and conduct of complex negotiations and litigation;
- skill in legal research, analysis, and the drafting of litigation documents;
- skill in oral advocacy;
- skill in the use of expert witnesses and familiarity with common areas of forensic investigation;
- skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
- skill in the investigation, preparation, and presentation of mitigating evidence; and,
- skill in the elements of trial advocacy.

## **Judicial Council Eligibility Standards for Contract Counsel**

The Indigent Defense Subcommittee will make its determinations of eligibility for a lawyer to obtain an indigent-defense contract with the Judicial Council based on the following standards:

1. The attorney's application must demonstrate that he or she has the experience and the legal skills necessary to independently and reliably provide high-quality representation in criminal cases.
2. The attorney's references must indicate their confidence in the lawyer's ability to handle serious felonies independently and reliably and must affirm the attorney's reputation for professionalism.
3. The attorney must possess professional liability insurance in the amount of \$100,000/\$300,000.
4. The attorney must be a member of the New Hampshire Bar.
5. The attorney must have actively practiced criminal law for a minimum of three years and possess a substantial record of jury trial experience.