



Committee on Indigent Appointments

Charles A. Lloyd, Chairman

Richard W. Wells, Administrator

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January 18th, 2019

Dear Court-Appointed Attorney:

This letter is meant to remind and update you on information relating to Indigent Representation. Much of what is described in this letter is taken directly from "Regulations for Appointment of Counsel in the 18th Judicial District"; this document can be found on the Office of Indigent Services (IDS) website:

www.ncids.org. The direct link is

<http://www.ncids.org/IndigentApptPlans/PD%20Appointment%20Plans/18th%20judicial%20district.pdf>. If you receive a hard-copy of this letter and would like an e-mail version so that you can better use the web-links herein, please send me an e-mail. My e-mail address is at the bottom of this letter.

Sabbatical Policy

The Committee realizes that it is difficult to balance a law practice with outside responsibilities. There may come a time when a big case, an ill family member, or some other difficulty makes it hard to provide zealous representation in all of your cases. Based upon the above, it is the policy of the Committee that a court-appointed attorney may temporarily remove his/her name from any or all court-appointed list(s) for up to one (1) year. In order to do this, the attorney must give written notice to both the Clerk of Court and the Committee Administrator. The written notice must clearly state that the attorney desires to take a sabbatical from appointments. The attorney does not need to give a reason for the sabbatical. When the attorney is ready to begin receiving appointments again, the attorney shall give written notification to the Committee Administrator. The Committee Administrator is Richard Wells in the Public Defender's Office (Greensboro). This sabbatical can only be taken with regard to prospective clients – the attorney should continue to represent current clients.

Vacation Policy Reminder

When taking a vacation lasting more than four (4) business days, a court-appointed attorney shall notify the Clerk of Court in writing of the vacation period. Notices should be sent to both the High Point and Greensboro Clerk of Court if you are on lists in both venues. This written notification shall describe upon which list(s) the attorney's name appears. The attorney should not receive appointments while on vacation. Because the Public Defender sometimes gets overloaded and will "farm out" Criminal and Juvenile cases, you should also send a copy of your vacation notice to the Public Defender's Office if you are on these lists; if you are on both Greensboro and High Point lists, please send a copy of your notice to both the High Point and Greensboro Public Defender Offices.

File Folders Required

The Clerk of Court (and Judges and fellow Attorneys) will often communicate with you by leaving documents in your attorney pick-up folder. These folders are located in or near the Clerk of Court in both courthouses. Make certain you have a folder. You must check this folder regularly to gather documents the Court will leave for you.

How will I Know When I Am Appointed to a Case?

The Clerk of Court or the Public Defender's Office will notify you when you are appointed to a case. This is typically done by phone and/or e-mail. Thereafter a copy of some relevant paperwork will be left in your courthouse pick-up folder. In order for this system to work, you MUST provide the Clerk of Court, Administrator and Public Defender with written notice of your current phone number(s) and e-mail address. The current contacts are: Nancy.M.Swanson@nccourts.org (Greensboro Clerk's contact); Donise.R.Hunt@nccourts.org (Greensboro Clerk's contact); Wendy.J.Stuart@nccourts.org (High Point Clerk's contact); Richard.W.Wells@nccourts.org (Administrator and Public Defender contact); and Rhonda.H.Ford@nccourts.org (Public Defender contact); Wendy.L.Clagg@nccourts.org (High Point Public Defender contact). Redundancy in providing this information is suggested so that nothing is missed. In other words, please always let all the above persons know your contact information.

Change of Address or Phone Number

The Committee Administrator, the Clerk of Court, and your clients must know how to reach you. Whenever your business address, phone, E-mail, or FAX number changes, please give written notice to both the Clerk of Court, Public Defender and the Committee Administrator. Please see section/paragraph directly above regarding who you should contact with this information.

Notifying the Clerk of Court

When (as herein required) an attorney is required to give written notice to the Clerk of Court, the attorney should forward the written notice to one or both of the following persons in the Clerk's Office: **Wendy Stuart** (High Point), **Nancy Swanson** (Greensboro) or such other person as they may direct.

Withdrawing from Representation

There may come a time when, due to a conflict, closing a law practice, or some other valid reason, an attorney must withdraw from representing an individual client. Failure to properly withdraw from a case can lead to Bar/Court sanctions against you. Withdrawal should be done in open court when the matters are on the court docket. The courtroom clerk will then get the next attorney's name from the master list. Withdrawal is done this way so that the clerk's office can more efficiently change their records and provide new counsel with any documents. Enclosed with this letter are two (2) withdrawal motion/orders to help you should this occur. In an attached letter is a more thorough explanation of withdrawal in the context of a problem which often arises in criminal cases. **IMPORTANT:** Please provide the new attorney and your former client with each other's contact information. Please provide new counsel with a copy of important documents/discovery. **IMPORTANT:** If you are not on the list to receive a certain type of case, and the court mistakenly assigns such a case to you, you should seek to withdraw.

When there are Multiple Appointed Attorneys

Our local indigent appointment rules require that (whenever possible) the same appointed attorney shall handle all pending matters; this may require one appointed attorney to withdraw. If no single attorney is on all relevant appointed lists, then all attorneys shall consult with each other to assure that the client's interests are protected. This rule primarily applies to criminal and juvenile cases.

Representation of Client by other Members of Law Firm

Generally, a court-appointed attorney cannot delegate material responsibilities owing a client. Another attorney in the same law firm may handle material responsibilities only if: (1) the client approves; (2) the court approves; (3) the substitute attorney is on the list to handle this type of case; and (4) it is in the best interest of the client. *See IDS Rule 1.5(d)(2), Part 1 of Rules for Non-Capital Criminal and Non-Criminal Trials.*

Jail Visits Required

Guidelines from the Indigent Defense Services (IDS) indicate that an appointed attorney, or his designee, should see a jailed client as soon as possible. Our local rules require you to visit a jailed client within three (3) business days after notice of appointment. Furthermore, counsel should keep the client informed of the progress of the case.

Interpreters

AOC now provides interpreters for nearly all in-court interpretation. If you need in-court interpretation, contact Karin Vicard (336-412-7250) well before the hearing. For out-of-court interpretation, Karin Vicard and the NC Courts website can provide direction. <http://www.nccourts.org/LanguageAccess/Default.asp>

Working in Multiple Courthouses

It is almost impossible to be in all the courtrooms and courthouses required of your practice. In recent years, I have heard increasing complaints about attorneys not coming to court. Many of these complaints arise from High Point. Always have the phone numbers for fellow attorneys, relevant clerks and opposing counsel; let them know where you are as soon as possible if you are running late. Find some way to get a message to the Judge and opposing counsel. If you practice in High Point Superior Court, please follow the “pleading day” rules and be in contact with Amanda Leazer (822-6816) in the Superior Court Judge’s Chambers.

State Bar Disciplinary Action

Attorneys on the Court-Appointed Lists are required to notify the Public Defender of the results of any State Bar disciplinary action.

Outside Compensation from Appointed Clients Prohibited

An attorney shall not receive anything of value from anyone in connection with representation during the period of appointed representation; compensation is limited to that provided under the applicable IDS rule. If you (as an appointed attorney) learn that your client has other pending charges for which he is entitled to appointed counsel, the appropriate action is for you (and/or your client) to ask the court to appoint you on these additional cases. If you learn that your client has other pending charges for which he would not qualify for appointed counsel, Indigent Defense Services (IDS) prefers that you refer the client to another attorney to avoid any potential appearance of impropriety. If you learn that your client has sufficient funds to pay for the appointed representation, NCGS 7A-450(d) directs you to inform the court so that the court can re-evaluate indigency. Once the appointed representation is concluded, the client may retain you on other matters.

Court Services – How do I get my Jailed Client to Court?

Often, your client will not be brought from the jail for his/her court date. If you need your client brought from jail for his/her District Court date, please contact **Court Services** (CS) before the District Court date. CS is a wealth of information and resources regarding past and present jailed persons; if you do not know about CS, please stop by and visit with them. CS Greensboro = 641-2660. CS High Point = 641-2674.

Dealing with Clients and their Families

I have had a number of complaints recently regarding court-appointed attorneys speaking poorly towards clients and their families. You will avoid many problems with your clients if you (1) keep them informed and (2) are kind and sympathetic. We are often dealing with uneducated persons on their worst days when they are facing jail, loss of money and possible loss of their children. Be understanding; treat others better than you would wish to be treated. Please note the Committee does have the power to remove your name from the Court-Appointed Lists.

Withdrawing from Representation when a Client is no longer Indigent

If you learn your client has become wealthier and is no longer indigent, you are required to report this matter to the Court. By statute, this information is not considered attorney-client privilege. *NCGS 7A-450(d)*.

Fee Sheets

You must keep track of your hourly time spent on each individual, court-appointed client/case. When you have a large number of hours, the court may require you to submit a written itemized schedule of your fees. The court has the ability to unilaterally reduce your fees if they appear excessive and are unsupported. IDS has a link on its website (here) designed to help you with fee issues and calculations. Simply telling a Judge “*I always submit at least one hour for each court date*” is not sufficient. Moreover, this Committee has the power to sanction attorneys for improper billing of fees. *See Local Indigent Appointment Rule VIII(C)* (“*Removal from List*”).

<http://www.ncids.org/rateinfo/rateinfotext.htm?c=Information%20for%20Counsel,%20PAC%20Rate%20Information%20and%20Calculators>

Valuable Websites

Below are a few of the free websites that I use in my criminal law practice, these may prove helpful. If you would like me to e-mail these to you, please send a request to my e-mail address (at bottom of this letter).

www.ncids.org Copies of local and statewide rules regarding indigent representation can be found at the Indigent Defense Services (IDS) website. Free legal resources including the very valuable NC Defender Manual, Juvenile Manual and Guardianship Manual. CLE information is also here.

<http://p2c.guilfordcountysheriff.com/jailinmates.aspx> The link to the Sherriff’s Department Jail webpage. Here you can find who is in jail, which jail facility, bond amounts and arrest dates. You may input your client’s name OR if you search with the name left blank you can get a list of all inmates.

<http://www.nccourts.org/Default.asp> The official State Court website. You can view printed calendars and dockets here and conduct a county/statewide search for your clients’ pending criminal court dates. To look up pending criminal court dates, click on “calendars” twice and check the “query” links. Many AOC court documents and forms can be downloaded from here; see “forms” link at the top of the webpage.

<http://www.ncbar.com> The NC Bar website. Look up bar rules and information including the address and phone numbers of all NC attorneys.

<http://www.aoc.state.nc.us/www/public/html/opinions.htm> NC Appellate Court opinions.

<http://www.ncappellatecourts.org/> NC Appellate Court Website including access to Briefs.

<https://www.ncdps.gov/index2.cfm?a=000001,002185> The NC Department of Correction. Look up information on past and present prisoners (“offenders”). Also look up prison addresses.

<https://www.sog.unc.edu> NC School of Government. CLE information and free legal information by subject matter in downloadable PDF format. Please browse though the entire School of Government website; there is a great deal of valuable information and research here.

<https://www.sog.unc.edu/casecompendium> NC School of Government. A free “searchable” summary of all NC-relevant criminal law cases from November 2008 – present. This is one of the first places I turn for research. Please note it may take a several seconds or a minute to load the document as it is very large.

<http://benchbook.sog.unc.edu/> NC School of Government (SOG). The Superior Court Judge’s Benchbook. This is a guide to Criminal and Civil trials, Suppression hearings, etc. Well-written summaries of the law found in an orderly, searchable format. Use this link to see what the Judges use to gain their knowledge. Judges like to follow their own resources; an argument made citing a SOG source is often a winning argument.

<https://nccriminallaw.sog.unc.edu/> NC School of Government. The Criminal law Blog. Basically a free searchable listing of papers and blog posts on all things criminal law. Use the topic links at the bottom of each article to find other relevant information. This is one of the first places I turn for research.

If you would like for me to e-mail you a copy of this letter (with links to the websites), please send me an e-mail to my address below. If you need additional forms, or other information relating to court-appointed indigent representation, or have any other concern, please contact me in the Public Defender’s Greensboro Office (*PO Box 2368, Greensboro, NC 27402, phone: 336-412-7777*). Thank you for your time and attention to these matters and also for your efforts in providing indigent representation.

Very truly yours,

Richard W. Wells

Richard W. Wells, Administrator
336-412-7732 – Direct Line
Richard.W.Wells@nccourts.org

Enclosures

Committee on Indigent Appointments

Charles A. Lloyd, Chairman

Charlene Y. Armstrong
Walter "Trip" Baker, III
Duane K. Bryant
John Bryson
Frederick G. Lind
Anne Littlejohn
Joel Oakley
Christopher L. Parrish
Jan E. Pritchett
Mittie R. Smith
Thomas W. Smothers
Julie C. Wall

Richard W. Wells, Administrator

Ex Officio
Lisa Y. Johnson-Tonkins
Wheaton Casey

October 1st, 2015

RE: Withdrawing from representation when you receive a court-appointed case and you are not on the list to receive this type of case

Dear Court-Appointed Attorney:

There has been confusion as to how to handle the situation where a court-appointed attorney is assigned a criminal case when he/she is not on the list to receive this type of appointment. This problem arises most often when the attorney is only on the adult/misdemeanor list, receives a misdemeanor case, and thereafter receives a felony case.

When this occurs, the attorney ordinarily should seek to withdraw and have all criminal cases transferred to the same new attorney; our local rules direct that the same court-appointed attorney should handle all pending criminal matters. Our local rules further provide that withdrawal must be accomplished in open court when the court files are in the courtroom. *See Local Rules V(E-F), VI(E), Regulations for Appointment of Counsel in the 18th Judicial District.* It would aid the administration of justice if you provided the new attorney with a copy of any relevant documents or discovery you have received. The procedure for withdrawing from representation is slightly different depending upon who appointed the attorney.

If the Public Defender initially appointed the client to you, you should inform the Judge in open court of this fact and request the Public Defender be re-appointed to all cases. *See Local Rule V(E).* However, if you know the Public Defender has a conflict with this defendant, a private attorney should be appointed.

If the Court (Judge) initially appointed the client to you, you should so advise the Judge in open court and request the courtroom clerk to provide the court with the next private attorney's name from the court-appointed list. *See Local Rule VI(E).*

There are times that you and your client may want you to remain the attorney (even though you are not on the list to receive the higher-level felony charge). There is no rule on this. However, in order to avoid possible problems, you should inform the DA's Office and have the matter put on the record before a Judge in open court – thus having your client waive any problem which may exist.

I have herein included a withdrawal form to aid you in this process. Please call me if you have any questions.

Sincerely,

Richard W. Wells

Richard W. Wells, Administrator

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
DISTRICT / SUPERIOR COURT DIVISION
FILE NO(S):

GUILFORD COUNTY
Greensboro Division

THE STATE OF NORTH CAROLINA)
)
Vs.)
)
)
_____,)
Defendant.)

ORDER
RELIEVING COURT-APPOINTED
ATTORNEY

THIS MATTER coming on to be heard before the undersigned Judge upon motion of Appointed Counsel to be relieved from further representation in this matter; AND IT APPEARING THAT these cases are:

- List 1 – Misdemeanors
- List 1A – Misdemeanor DWI cases
- List 2 - Felonies F through I
- List 3 - Felonies A through E; **AND** all Drug Trafficking Cases **AND** All Indecent Liberties

Current Appointed Counsel is _____ (your name). I was originally assigned this client by **The Court** or **The Public Defender** (circle one). I request relief from the appointment for the reason below described.

- That a conflict of interest exists or some other significant issue affecting representation.
- That there are multiple assigned counsel. It is best for a single appointed attorney to handle all court-appointed cases. *See Indigent Appointment Plan, Parts V(F) and VI(E).*
- That defendant has received additional more serious cases and Appointed Counsel is not on the court-appointed list to receive these more serious charges. (*Please note: If you received this appointment from the Public Defender’s Office, the Public Defender should ordinarily be re-appointed to this case(s).*)
- Respondent has retained private counsel which has been verified.
- The case has been dismissed with leave (“VL”) **or** counsel has lost contact with the client despite the attorney’s reasonable efforts. *See NCR of Prof. Conduct 1.2 and RPC 223.*

IT IS NOW THEREFORE, ORDERED AND DECREED THAT the above named Appointed Counsel is hereby relieved of all responsibilities as attorney of record in the above-titled case(s) and that:

_____ (new attorney name) is hereby **appointed / retained** (circle one) as attorney of record in the case(s).

This next court date/courtroom is: _____

This the _____ day of _____, 20____.

District or Superior Court Judge Presiding (circle one)