



Indigent Defense Plan
Denton County District Courts
For the Year 2015 - Amended

DENTON COUNTY COURTS BUILDING
1450 E. MCKINNEY, DENTON, TEXAS 76209
940-349-2300 940-349-2301 FAX

Indigent Defense Plan
Denton County District Courts
For the Year 2015

PURPOSE AND SCOPE

This alternative program for appointing counsel for indigent defendants in felony criminal cases is created pursuant to Article 26.04 of the TEXAS CODE OF CRIMINAL PROCEDURE. Its purpose and intent is to ensure all indigent defendants receive quality legal assistance in the disposition of their cases from the reasonable and impartial appointment of qualified attorneys in a manner which is fair, neutral, and nondiscriminatory.

Nothing in this plan is intended or shall be construed to obligate Denton County by contract or to bestow any right of employment.

This plan does not address death penalty cases. Denton County averages one death penalty case approximately every eight years; the appointment and compensation of counsel in these cases is to be made on a case-by-case basis pursuant to Article 26.052 of the TEXAS CODE OF CRIMINAL PROCEDURE.

When the terms “Judges”, “District Judges” or “District Courts” are used in this document it means the Denton County District Judges whose regular dockets include felony cases. Masculine pronouns are used in this document to indicate one whose sex is unknown and/or immaterial.

ATTORNEYS TO BE APPOINTED

The Denton County District Courts will use an alternative appointment system that meets the requirements of the statute whereby attorneys in private practice will be appointed to represent defendants charged with felony offenses. An attorney wishing to be included on an appointment list will make application to the District Judges through the District Court Administration, 1450 E. McKinney, Denton, Texas 76209 or fax at 940-349-2301 by completing an application form, which has been approved by majority vote of the District Judges. Appointments will be made from attorneys who have made application and who have been approved by a majority of the District

Judges. Additionally, the District Courts will, by majority vote, determine if the applying attorney should be included on Appointment List A or B as set forth below.

Appointment List A:

Appointment List A will be used to appoint attorneys to represent defendants where the maximum possible punishment which may be assessed for the most serious charge exceeds 10 years confinement. To be included on this list an attorney must be licensed and in good standing with the State Bar of Texas and must meet the following minimum requirements:

Be certified in criminal law by the Texas Board of legal Specialization; or,

Must average 10 hours a year of continuing legal education courses relating to criminal law;

During the preceding 5 years must have been lead counsel or presiding judge on 5 felony jury trials.

Must have been licensed to practice law in the State of Texas for at least 3 years;

Must not have received a public reprimand or greater penalty within the last 3 years;

Must not have been convicted of or currently charged with a felony or any crime of moral turpitude, and

Must have an office in Denton County, or have a special designation as set forth below.

Must have Denton County business address registered with Texas State Bar.

This provision does not apply to attorneys with special skills (foreign language, sign language, etc.) or attorneys who only handle appeals.

Appointment List B:

Appointment List B will be used to appoint attorneys to represent defendants where the maximum possible punishment which may be assessed for the most serious charge is 10 years confinement or less. All attorneys included on Appointment List A will automatically be included on Appointment List B. The district judges may include additional attorneys on Appointment List B that are licensed and in good standing with the State Bar of Texas and meet the following minimum requirements:

Must average 10 hours a year of continuing legal education courses relating to criminal law;

During the preceding 5 years must have been lead counsel or presiding judge on 3 felony jury trials, must have been lead counsel on 10 misdemeanor jury trials, or 10 felony jury trials since being licensed as an attorney;

Must have been licensed to practice law in the State of Texas for at least 2 years;

Must not have been convicted of or currently charged with a felony or any crime of moral turpitude, and

Must have an office in Denton County, or have a special designation as set forth below.

Must have Denton County business address registered with Texas State Bar.

This provision does not apply to attorneys with special skills (foreign language, sign language, etc.) or attorneys who only handle appeals.

Special Designation:

If an attorney is fluent in a foreign language or sign language, then a special designation noting the proficiency(s) will be included on the appropriate list by the attorney's name.

If an attorney wishes to be included on either List A or B for the purpose of handling appeals only, this will be noted on the list beside the attorney's name. In order to be included on a list for appeals only, an attorney must be licensed and in good standing with the State Bar of Texas and must meet the following minimum requirements:

Be certified in criminal law by the Texas Board of legal Specialization; or,

Must average 10 hours a year of continuing legal education courses relating to criminal law;

During the preceding 5 years the attorney must have filed at least 4 appellate briefs with Texas courts on criminal matters;

Must have been licensed to practice law in the State of Texas for at least 2 years; and

Must not have been convicted of or currently charged with a felony or any crime of moral turpitude.

Removal from a List:

Any attorney may be removed from a list by majority vote of the District Judges. Some of the factors which may be considered in removing an attorney from a list include:

The failure of an attorney to contact his client within 24 hours from notice of appointment.

The attorney making a frivolous appeal of the amount paid by the court pursuant to Section 26.05 of the Texas Code of Criminal Procedure.

It is shown after a hearing that the attorney submitted a claim for legal services not performed by the attorney.

The failure of an attorney to demonstrate professionalism and reliability when providing representation to his client.

The failure of an attorney to exhibit proficiency and commitment in providing zealous representation to his client.

The failure of an attorney to conduct himself in accordance with the rules of ethical conduct or the Lawyers Creed.

An attorney may request to be temporarily suspended from receiving appointments if the attorney feels for any reason he will not be able to contact defendants within 24 hours of appointment or will not be able to provide quality legal services to his clients (i.e. excessive caseloads, vacation, medical leave, personal problems, etc.). To be temporarily suspended from appointments, the attorney should contact District Court Administration in written form at District Court Administration, 1450 E. McKinney, Denton, Texas 76209 or by fax to 940-349-2301. The suspension will remain in effect until the attorney contacts the District Court Administrator in writing to be reinstated.

Duty of Attorneys on Appointment List:

If an attorney has a change of circumstances regarding any of the minimum requirements for the list upon which the attorney appears, the attorney shall notify the District Court Administrative Judge of the change or circumstances immediately.

An attorney appointed on a felony case shall make himself available for appointment to a misdemeanor case arising out of the same transaction. These appointments will be made and services will be compensated through the County Criminal Court's indigent defense system.

Grandfathering of Attorneys on the Appointment List:

As of January 1, 2002, the District Courts maintained a list from which attorneys were appointed to represent indigent defendants. The attorneys on that list will be maintained on the current list of attorneys available for appointment unless and until they are removed by majority vote of the district judges, or pursuant to other provisions of this plan.

ASSIGNING AN ATTORNEY TO A CASE

Judge to Make Appointment:

The District Judges will make all appointment of counsel to indigent defendants in felony cases. If the defendant has a case pending in a district court, the judge of that court will make the appointment. If the defendant has no case pending in a district court, then the judge who has impaneled the current Grand Jury will make the appointment. If the District Judge who is to make appointment is absent or otherwise unable to make a timely appointment, then any other District Judge will make the appointment. The District Court Administrator (Sandra Hardy, Denton County Courts Building, 1450 E. McKinney, 3rd Floor, Denton Texas 76209) will receive and screen requests for appointed counsel. She will determine if the defendant has other charges pending in a court and if so forward the request to that court, noting what

cases are pending, the attorney representing the defendant on those charges, and whether or not the defendant is in custody.

For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms for requesting counsel. The magistrate will ensure assistance in completing the forms at the same time. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made. Regarding the appointment of counsel, persons arrested in other counties on local warrants must be appointed counsel in the county that issued the warrant within 1 working day of receipt of the request in counties with a population of 250,000 or more and within 3 working days of receipt of the request in counties under 250,000. Persons arrested on out-of-county warrants must be appointed counsel in the county of arrest if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of arrest. [Art. 1.051 (c-1), CCP].

Timing of Appointment:

If a requesting defendant is in custody and is determined to be indigent based on the information from the Request for Appointed Counsel, the appointing judge will appoint counsel to represent the defendant within one working day from receipt of a completed Request for Appointed Counsel. If after reviewing the Request for Appointed Counsel it is unclear if the defendant is indigent, the judge will order the defendant to court to inquire of defendant's financial status and may conduct a hearing if necessary.

If a requesting defendant is not in custody, the appointing judge will determine indigence and appoint counsel at the first setting of the case or when adversarial proceedings are initiated. Each indigent defendant charged with an offense punishable by confinement who appears in court without counsel shall have an opportunity to confer with appointed counsel before judicial proceedings commence.

For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms for requesting counsel. The magistrate will ensure assistance in completing the forms at the same time. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made. Regarding the appointment of counsel, persons arrested in other counties on local warrants must be appointed counsel in the county that issued the warrant within 1 working day of receipt of the request in counties with a population of 250,000 or more and within 3 working days of receipt of the request in counties under 250,000. Persons arrested on out-of-county warrants must be appointed counsel in the county of arrest

if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of arrest. [Art. 1.051 (c-1), CCP].

If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website at <http://tidc.tamu.edu/public.net/> or from District Court Administration, Denton County Courts Building, 1450 E. McKinney, 3rd Floor, Denton, Texas 76209. The defendant may submit these forms to District Court Administration, Denton County Courts Building, 1450 E. McKinney, 3rd Floor, Denton, Texas 76209 or by fax to 940-349-2301. The court will rule on all requests for counsel submitted in this manner.

Determination of Indigence:

A defendant wishing to request court-appointed counsel shall complete a Request for Appointed Counsel Form.

A defendant is presumed to be indigent if:

The defendant is in jail and unable to make bail.

The defendant is currently receiving free medical services from Denton County indigent health services.

A district judge making the indigence determination shall consider the defendant indigent under the above circumstances unless it clearly appears from the totality of the Request for Appointed Counsel the defendant is capable of hiring an attorney.

Absent a presumption of indigence, the appointing judge will make a case by case determination of indigence. The appointing judge should consider the following factors:

the defendant's income;

source of income;

assets;

property owned;

outstanding obligations;

necessary expenses;

the number and ages of dependents,

if the defendant is receiving Food Stamps,

if the defendant is receiving Temporary Assistance for Needy Families,

if the defendant is receiving Supplemental Security Income, and;

spousal income available to the defendant (unless the spouse is the victim of the offense).

Where resources available to the defendant over the next 6 month period (through current cash flow or the selling of assets available to the defendant) does not exceed the national poverty level by an amount needed to hire an attorney for the case(s) charged, the appointing judge should deem the defendant indigent. For this

determination the judge should consider the amount necessary to hire an attorney to be:

- \$10,000 for a first degree felony;
- \$7,500 for a second degree felony;
- \$5,000 for a third degree felony;
- \$2,500 for a state jail felony;

Selection of an Attorney:

Appointments shall be made in a nondiscriminatory manner from all qualified attorneys. The appointing judge should use his best efforts to match any special needs of the defendant (e.g. the defendant speaks a foreign language) or special requirements of a case to the abilities of a particular attorney on the appropriate appointment list.

If a defendant has an attorney representing him on a pending case and that attorney is on the appropriate appointment list for a new case the same attorney should be assigned to the new case. Where a List B attorney is appointed to represent a defendant on a pending case, and a defendant's new case would require an appointment of a List A attorney, the appointing judge should appoint an attorney from List A for the new case. In such instances, the appointing judge may, but is not required to, remove the attorney appointed on the pending case and replace that attorney with the newly appointed attorney from List A.

To facilitate the expedient assistance of counsel for indigent defendants, where there is an attorney from the appropriate list present in the courtroom at a time when a defendant is present in the courtroom and an appointment is to be made for that defendant, the appointing judge may appoint the attorney present at the time to represent the defendant.

When no circumstances listed above indicate the appointment of a particular attorney, the appointing judge should appoint the next attorney from List A or List B, as the indicated by the punishment range for the offense charged.

Removal of an Attorney from a Case:

If upon request of appointed counsel showing valid ethical grounds or other good cause, the court believes it would not be in the best interest of the defendant for representation to continue, the court may remove counsel and appoint new counsel.

If after trial of the case, counsel or the defendant request removal of the appointed counsel for purposes of appeal and the court believes it would not be in the best interest of the defendant for trial counsel to continue representation on appeal, the court may remove counsel and appoint new counsel to handle the appeal.

If the defendant retains counsel to represent him in the case, the court may discharge appointed counsel.

If, due to a change in the defendant's circumstances or information being brought to the court's attention, it appears to the court the defendant is no longer indigent, the court may discharge appointed counsel and require the defendant to retain counsel.

If an appointed attorney fails to contact his client within 24 hours from notice of appointment, the court may discharge that counsel and appoint new counsel.

After notice and a hearing, the court may discharge appointed counsel for any other good cause shown.

Duty of Appointed Attorney:

The appointed attorney shall evaluate the indigence of the defendant and apprise the court if at any time it appears the defendant's indigence is in question.

The appointed attorney shall remain on the case until the defendant is acquitted, appeals are exhausted per Article 1.051 (d) of the TEXAS CODE OF CRIMINAL PROCEDURE, or the court enters an order of record discharging the attorney from further representation.

If appointed counsel is removed from a case, appointed counsel shall prepare an order releasing him from any further obligation in the case and appointing the successor attorney if one is named to replace him. The removed attorney shall also contact the successor attorney and inform the successor attorney of his appointment and of any deadlines or settings in the case.

The appointed attorney shall:

Contact his client within 24 hours from notice of appointment.

Demonstrate professionalism and reliability when providing representation to his client.

Exhibit proficiency and commitment in providing zealous representation to his client.

Conduct himself in accordance with the rules of ethical conduct and the Lawyers Creed.

Provide proof of required six (6) hours of continuing legal education hours by October 1 of each year to District Court Administration, 1450 E. McKinney, Denton, Texas 76209 or by fax to 940-349-2301.

Beginning in 2014, Article 26.04(j) of the Code of Criminal Procedure will require all attorneys who accept appointments in adult criminal and juvenile delinquency cases to submit an annual statement which describes the percentage of their practice time that is dedicated to work on those appointed cases. Every year, an attorney is required to submit a practice-time statement

to each county in which the attorney accepted an appointment in an adult criminal or juvenile delinquency case during a fiscal year period that begins on October 1 and ends on September 30. Attorney must submit required information on Attorney Reporting Form. The statement is due no later than October 15th. The report must be submitted through the online form to the Texas Indigent Defense Commission.

Address any concerns regarding felony appointments to the District Judge of court where defendant is assigned or Local Administrative Judge (LAJ).

Submit billing invoices for defendants receiving probation or pre-trial diversion at least two days prior to plea date so fees may be added to final judgment at time of plea hearing.

PAYMENT FOR SERVICES RENDERED

Payment Schedule:

Pursuant to Article 26.05 of the TEXAS CODE OF CRIMINAL PROCEDURE, the District Courts of Denton County, Texas adopt the following fee schedule for court appointed attorneys. Accordingly, a copy of this Indigent Defense Plan for the Denton County District Courts will be sent to the Denton County Commissioners Court upon its adoption.

Payment for services rendered to indigent defendants will be made on a fixed fee basis or a per hour basis.

Fixed fee payments will be made at \$400.00 per half day if the case is disposed by trial (jury or non-jury), \$500.00 per plea (single or multiple cases) if disposition is by plea, \$200.00 per defendant if the case or cases are dismissed, and an additional payment of \$1,200.00 per appellate brief filed for cases on appeal. If payment is made on this fixed fee basis no additional payments will be made for out of court preparation time.

The appointed attorney may elect to be compensated on a per hour basis. Hourly payments will be made at the rate of \$125.00 per hour of preparation time performed out of court, and \$125.00 per hour for services performed in open court (*does not include down time, e.g., waiting on a verdict*). Mileage will be paid at County approved rate; however, travel time will not. Attorney must include actual mileage on billing invoice. Mileage may not be approved if not included as part of billing invoice.

Incidental expenses related to research, jail visits, and conferences with clients or witnesses, postage, copying, courier fees, file maintenance or setup fees, paralegal's assistance or any other miscellaneous expenses are included in the above schedules and will not be compensated separately. Upon good cause shown, the Court may approve an amount for attorney fees which exceeds the amounts stated above. In

making its determination, the Court may consider the time and labor required the complexity of the case, and the experience and ability of appointed counsel.

Investigation and Expert Expenses:

Pursuant to Article 26.05 of the Texas Code of Criminal Procedure, appointed counsel shall be reimbursed for reasonable and necessary expenses, for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for by Articles 26.052(f) and (g), of the Texas Code of Criminal Procedure and expenses incurred without prior court approval shall be reimbursed in the manner provided for by Article 26.052(h) of The Texas Code of Criminal Procedure.

Unless good cause is shown prior approval of the court should be obtained to reimburse the attorney for the cost of an investigator or expert, and should not exceed \$500.00. This reimbursement is in addition to any amounts paid to the appointed attorney for services performed. The payments for experts may be paid to the attorney to reimburse the attorney for the cost or directly to the expert.

Upon good cause shown, the Court may approve an amount for expert fees or investigator fees which exceeds the amounts stated above. In making its determination, the Court may consider the time and labor required the complexity of the case, and the experience and ability of the expert or investigator.

Application for Payment:

No court will approve payment and the Auditor will not pay a request for payment of counsel unless submitted on a completed Attorney Fees Expense Claim Form – District Court.

If an attorney elects to be compensated on an hourly basis, the attorney must attach in triplicate a detailed explanation of services performed including the date performed, the time spent on each activity, and a designation of in court or out of court time. For services performed on appeal the attorney must attach one copy of the brief submitted to the appellate court. The attorney must also designate all non-attorney expenses as other direct litigation expenditure.

If possible, the attorney should present the court with a completed Attorney Fees Expense Claim Form upon disposition of the case but in no event more than 20 days after disposition of the case. When a case is disposed of by agreed plea the attorney will be compensated at the fixed rate, unless at the time of the plea the attorney presents the Court with a completed Attorney Fees Expense Claim Form for hourly charges.

Except on good cause shown, no partial payment or advance payment will be made on cases. However, payment for the trial court disposition may be paid pending

appeal with payment for the services performed on appeal made at the conclusion of all appeals.

If a judge disapproves requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount.

ADDITIONAL LANGUAGE ADDED TO QUALIFY FOR GRANT MONIES

Abiding by laws:

All persons in Denton County should abide by all applicable laws. This proclamation includes arresting officers, and magistrate as more specifically set forth below.

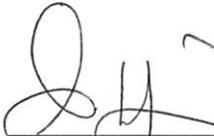
Arresting officers shall comply with Article 15.17 of the Texas Code of Criminal Procedure, to-wit; In each case enumerated in The Texas Code of Criminal Procedure, the person making an arrest in Denton County or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some Denton County magistrate or, if necessary to provide more expeditiously to the person arrested the warnings described by Article 15.17 of the Texas Code of Criminal Procedure, before a magistrate in a county bordering Denton County. The arrested person may be taken before the magistrate in person or the image of the arrested person may be broadcast by closed circuit television to the magistrate.

Magistrates shall comply with Article 15.17 of the Texas Code of Criminal Procedure, to-wit; the magistrate shall inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel and provide to the person arrested the Request for Appointed Counsel Form. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31 of The Texas Code of Criminal Procedure, as appropriate. The magistrate shall ensure reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. The magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to The District Court Administrator (Sandra Hardy, Denton County Courts Building, 1450 E. McKinney, 3rd Floor, Denton, Texas 76209) the forms requesting the appointment of counsel. The magistrate may use the model magistrate's warning form promulgated by the Task Force of Indigent Defense and found on the internet at <http://www.courts.state.tx.us/tfid>.

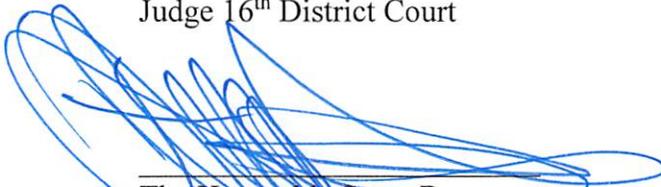
The Right of Attorneys to Appeal Fee Payment:

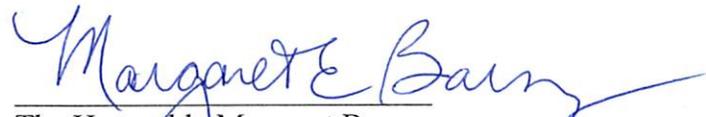
An Attorney shall have the rights bestowed on him by Article 26.05(c) of the Texas Code of Criminal Procedure, to wit; an attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the Presiding Judge of The Eighth Administrative Judicial Region (The Honorable David Evans, Tom Vandergriff Civil Courts Bldg., 100 North Calhoun St., Fort Worth, Texas 76196) The motion should contain a short concise statement explaining why the attorney feels the disapproval was improper or unfair and include any documents the attorney wishes the Presiding Judge to consider in ruling on the attorneys appeal (i.e. the Attorney Fees Expense Claim form and any documents generated by the District Judge in disapproving the attorney's claim). The Motion should be delivered to Eighth Administrative Judicial Regional Office, 401 Belknap Street, Fort Worth, Texas 76196.

Approved and adopted this the 7th day of October, 2016 by the Denton County District Judges whose dockets contain criminal matters:


The Honorable Sherry Shipman
Judge 16th District Court


The Honorable Bruce McFarling
Judge 362nd District Court


The Honorable Steve Burgess
Judge 158th District Court


The Honorable Margaret Barnes
Judge 367th District Court


The Honorable Brody Shanklin
Judge 211th District Court


The Honorable Jonathan Bailey
Judge 431st District Court

Pursuant to Article 26.04 of the TEXAS CODE OF CRIMINAL PROCEDURE this plan for the appointment of counsel to represent indigent defendants in the District Courts of Denton County, Texas in hereby approved on this the 17th day of October, 2016.



The Honorable David L. Evans
Presiding Judge
8th Administrative Judicial Region

**Denton County Supplemental Plan
for Continuing Legal Education Requirements**

The judges hearing misdemeanor and felony criminal cases having approved, the following amendment to the Plan for Appointment of Counsel is adopted and supersedes any previous continuing legal education requirements of the plan as follows:

MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENTS

Appointment in Criminal Cases. An attorney who meets the requirements of this rule may be appointed to represent an indigent person arrested for or charged with a crime, if the attorney is otherwise eligible to be appointed under the Appointment of Counsel Plan.

An attorney may be appointed under this rule only if the attorney:

- (1) Completes a minimum of six hours of continuing legal education pertaining to criminal law during each 12 month reporting period. The first period will begin on April 27, 2003, and then on **October 1** each reporting period thereafter. Continuing legal education may include activities accredited under Section 4, Article XI, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing; or
- (2) Is currently certified in criminal law by the Texas Board of Legal Specialization.

Reporting Period.

- (a) Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.
- (b) Continuing legal education activity completed during any reporting period in excess of the minimum six hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one year only.
- (c) To be included on the appointment list, each attorney must annually submit an affidavit to the county detailing the criminal continuing legal education activities completed in the prior year. Alternatively, an attorney may annually submit documentation showing the attorney is currently a specialist in criminal law.

Emergency Appointment.

If no attorney who meets these continuing legal education or board certification requirements is available by the time an attorney must be appointed in a case, another attorney may be appointed. The person making an appointment shall give priority to an attorney with experience in criminal or juvenile law, respectively.