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Defender Program  
Orientation Materials

### **TYPE OF CASES ASSIGNED TO COURT APPOINTED COUNSEL**

The defender Program, a division of circuit court administration, is responsible for the assignment of counsel based upon a court order so directing. Defendants are charged with a felony and must be financially unable to hire an attorney. There are approximately 2000 felony assignments made each year.

The office assigns counsel on paternity cases when the putative father is indigent.

The indigent misdemeanor population for the 67th District Court, Circuit Court probation violations, bench warrant arraignments and extraditions are serviced by attorneys receiving special assignment.

### **SECOND CHAIR PROGRAM**

The Defender Program will assign a second chair attorney to homicide cases, if the court assigned trial counsel requests assistance. Attorneys may volunteer to be on the second chair roster. The fee for second chair attorneys is \$100 per day of circuit court trial. The purpose is to allow attorneys to gain courtroom experience and provide assistance to the assigned trial attorney.

The assigned trial attorney may choose to delegate legal work or case related activity to the second chair. If that occurs, payment can be requested per the fee schedule. The assigned trial attorney will decide what services the second chair attorney will provide, beyond being present for trial and receiving the second chair fee.

The assigned trial attorney cannot delegate primary responsibility for the case to the second chair. Any questions about what the second chair attorney is authorized to do, should be discussed in advance with the court administrator.

### **WHO APPOINTS THE ATTORNEYS?**

In felony cases, the arraigning district judge enters an order either appointing or denying the appointment of counsel. Each of these orders is reviewed by defender program staff. If it appears as though the defendant is employed and/or has assets which may preclude eligibility, the assigned circuit judge may be requested to review the status of court appointed counsel.

If you are appointed for "district court only," you will receive a letter from the defender office requesting to be notified when the case is bound over to circuit court. Once notified, the circuit court

contract attorney assigned to that particular courtroom will represent the defendant at the arraignment to determine whether the circuit judge will continue court appointed counsel. If counsel is continued, the attorney originally assigned is notified to continue with the case.

*One exception:* If your client intends to enter a guilty plea at the time of the circuit court arraignment, assigned counsel will be advised to remain on the case.

### **HOW DOES THE COURT GET FINANCIAL INFORMATION ABOUT A DEFENDANT?**

A pre-bail interviewer from Court Services may interview the defendant. In other instances, the arraigning judge will question the defendant about ability to retain counsel.

The pre-bail interviewer will not ask the defendant about facts or circumstances relating to the charged offense.

Upon appointment, you should make it a practice to interview your client and obtain address, telephone, alternate telephone numbers and other information that could be of assistance in locating him/her, in the event of a failure to appear in court or for scheduled office appointments.

### **HOW DOES AN ATTORNEY RECEIVE APPOINTMENTS?**

There is one (1) felony probable cause conference day each week in the 68th District Court - Tuesday and one (1) probable cause conference day in the 67th District Court - Thursday. In the 68th District Court preliminary exams are held on the Tuesday following the probable cause conference. In the 67th District Court each Judge is assigned to either Panel 1 or Panel 2. Panel 1 exams are held on Tuesday and Panel 2 exams are held on Wednesday.

Between the arraignment and probable cause conference, all defendants for whom counsel is appointed must be assigned to an attorney. A defender specialist in conjunction with the circuit court administrator makes all assignments.

Police reports and other information are obtained from the prosecutor via a dedicated server. You will log into the server and find your file and client information. This can be done before the initial probable cause conference.

The Defender Program operates on what is called an "Attorney for the Day" concept. Attorneys will receive up to five (5) clients on a probable cause conference day and retain those individuals through final disposition in circuit court.

Capital cases, or those whose punishment includes the possibility of life in prison, are assigned to a separate group of experienced roster attorneys. This group of attorneys are also assigned to a limited number of non-capital felony cases.

You will be e-mailed a reminder of your calendar assignments for pre-trials, approximately one week in advance. Several days prior to your assignment day, you will be e-mailed again with instructions on how to obtain client information from the server. The prosecutor will place the discovery and "offer" (if any) at the same location. This is very convenient and a progressive move by the prosecutor and defender program.

A two (2) month list is published in advance that reflects probable cause conference days and the attorneys who will be scheduled for each day. If you have a conflict with the assigned date, you are advised to call the defender program as soon as possible to effectuate a change in schedule. You may be advised to switch with another attorney and provide verification of same in writing.

If there is a large group of cases for a particular probable cause conference day, then “overflow” attorneys are used. Every effort is made to even out the number of cases assigned. There are a number of factors which makes this difficult to do, such as the availability of counsel when overflow is needed, whether cases require counsel with a high level of expertise, etc. The number of attorneys on the list will also affect how often you can expect to receive assignments. We limit the list to a maximum of 100 attorneys.

Attorneys who wish to begin receiving cases are required to attend an orientation session which is held at the circuit court administrator’s office on the second Tuesday of the month at 10:00 a.m. Please call in advance to express your intent to attend the session and confirm the date and time.

After orientation, you will be required to attend probable cause conferences as an observer. Probable cause conferences are held at 8:30 a.m. in 68<sup>th</sup> District Court and at 1:p.m. in 67<sup>th</sup> District Court. Plan on setting aside a morning to fully observe the process.

Within 2-3 weeks from the orientation session, you will be assigned one client who is charged with a felony offense. Overflow assignments will follow. You must handle overflow cases on at least 2-3 occasions before you will be considered for an “Attorney for the Day” assignment.

#### HOW DO YOU FIND YOUR CLIENT?

If your client is on bond, he/she may meet you at the courtroom of the judge assigned to handle felony probable cause conferences for that day. There may be more than one judge handling felony probable cause conferences on a given day. If your client is in jail, he/she will not be brought to court for a 68<sup>th</sup> District Court probable cause conference.

Note: If your client is charged with a felony arising in the 67<sup>th</sup> District Court and is in jail, he/she will be brought to the court for the probable cause conference.

The Defender Program provides as many telephone contact numbers for the defendant as are available in court and jail records. If your client is out of jail because of a bond being posted by a professional bonding company, you can contact the company and request that they reach the defendant and have him/her contact you.

If your client is in jail, you can go to the video conference room located in the McCree Building near the central control/sheriff’s department. Read the note on the telephone for instruction on how to speak with your client. If you need to place an agreement, adjournment, etc. on the record in the courtroom, there is video capability in the courtroom.

If your client is in jail at the time of the circuit court arraignment/plea, he/she may not be brought to court. You must go to the jail and be video-conferenced to the courtroom.

There are 5 circuit judges assigned to a criminal docket. The time for each judge (who uses the video system at the jail) is as follows:

JUDGE	TIME	PURPOSE
Judge Judith A. Fullerton	8:15-8:45 AM	Arraignment/Guilty Plea
Judge Archie L. Hayman	1:30-2:00 PM	Arraignments/Guilty Plea

*Note: Check with assigned judicial office. The above is subject to change.*

You must be on time at the jail. Judges have a very limited period of time to use the video. If you are late, the judge may ask another attorney to take your case. You will lose the fee.

There is a local administrative order that eliminates circuit court arraignments, when a not guilty/stand mute plea is to be entered. Most typically, this is the arraignment that would follow a bind over from the district court after a preliminary examination is conducted. This is sometimes referred to as a "straight arraignment." You will be sent a scheduling order which will include pre-trial and trial dates.

The defendants are transported to the court for preliminary examinations, hearings and trials. To speak with your client before court starts, visit the inmate holding room in each of the court buildings. In the circuit court, the holding room is on the 4th floor. To visit a client at other times, go to the jail. Attorneys have unlimited access to clients. No appointments are necessary.

#### HOW DO YOU GET PAID?

The attorneys are paid by submitting a form called a "voucher." There are different kinds of vouchers that must be submitted depending on the services performed. All requests for attorney fees must be done by electronic submission via e-mail. Submission instructions are on the court website, [www.7thcircuitcourt.com](http://www.7thcircuitcourt.com), *Defender Program - attorney fee vouchers*.

All payments are completed by electronic fund transfer (EFT). The initial paperwork for EFT payments must be submitted to Mary Langdon, financial division. Updating account information is the responsibility of the attorney.

There is one staff person assigned to the processing of all fee requests. Our goal is to have vouchers processed and payment completed within 2 weeks. This may vary from time to time, especially if there are court holidays or the voucher requires review by the court administrator and judge.

On felony cases, all cases received for a particular "Attorney for the Day" assignment must be submitted on the same voucher form. Do not turn this voucher in for payment until there is a district court disposition on all cases. If you have a subsequent district court sentencing on any of these cases, continue to refer to the original probable cause conference date when the voucher form asks you to include the date of assignment. This is very important for our verification process.

All attorneys are required to consult with their client in jail or by conference (if on bond) between the probable cause conference and any date set for a preliminary examination. This consultation must be noted on the voucher, in order to receive payment.

If a preliminary examination is scheduled, and becomes unnecessary after further consultation with the client, the prosecutor must be notified ASAP - no later than the day following the probable cause conference. This is a critical directive and must be followed.

When a defendant is bound over to circuit court for further proceedings, a separate voucher is submitted for each case. You may submit no more than 2 vouchers per case, once the matter reaches the circuit court. For example, you may submit 1 voucher after the arraignment and guilty plea and another for the sentencing. If your case is tried to completion, you may submit a trial voucher and a subsequent one for sentencing. Because of the number of vouchers being processed from all courts, we are unable to accept more than 2 vouchers per case. Your requests will be rejected if this is not followed.

In order to be paid for a felony pre-sentence jail visit, you must complete the same at least the day before the sentencing. The pre-sentence report is available from the judge's office.

**Please note:** If you attend court for a preliminary examination, but none is conducted, there is no scheduled attorney fee. The pre-trial fee covers this circumstance.

All vouchers must be submitted within 60 days of sentencing or other final disposition. Failure to comply with this requirement may result in your removal from the Defender Program or a denial of payment. The court operates within the confines of a budget. The timely submission of voucher requests is critical.

### CONTINUING LEGAL EDUCATION REQUIREMENTS

As a condition of receiving assignments on felony cases, attorneys are required to attend one of the seminars offered each year by the Criminal Defense Attorneys of Michigan (CDAM). These seminars are held in the fall and spring of each year. The fall one is in Traverse City, Michigan. The spring offering is in the Oakland County area. The quality is excellent and the charge is nominal for attorneys accepting court appointed assignments.

Verification of your attendance must be turned in to the Defender Program by December 1<sup>st</sup> of each year. Attorneys who have not attended a CDAM offering, or an approved [in advance] alternate, will not maintain eligibility to receive appointments.

One seminar must be attended each calendar year or the next available one in the event that you join the program when the seminars are finished for the year.

I would strongly urge you to join CDAM. Membership is very reasonable and the benefits are enormous. A newsletter is also available with recent decisions and a calendar of defense oriented events, etc. For more information, contact: CDAM, 3300 Penobscott Bldg., 645 Griswold, Detroit, MI 48226, (313) 256-9833. CDAM is very helpful on case issues and location of experts.

The Defender Program and the Criminal Law Section of the Genesee County Bar Association also sponsor local seminars. Attendance is expected. E-mail notification will be made of any events.

### ATTORNEY/CLIENT COMMUNICATION & COMPLAINTS

The single most common complaint about attorneys is that they do not keep their clients informed about the status of the case. You are encouraged to spend time with your client when you first receive the case. It is only appropriate to review the police report with your client and ask for their version of the events.

You must interview the defendant in order to determine whether there are witnesses to contact, a mental competency issue that you will need to explore or notices/motions that must be filed.

In addition to visits, periodic letters regarding the status of the case would be good documentation of your communications. Speaking with family members must be resolved on an individual basis. It may be wise to keep a family designee informed of court dates and other scheduling information. Family members can be a good source of support when dealing with a client. There are cases, however, when the opposite is true. Naturally, attorney/client communications must be safeguarded.

I get letters from defendants that are dissatisfied with the assigned attorney. My policy is to contact the attorney, send or fax a copy of the letter received and ask for a reply. I do write back to defendants. Your response is necessary.

I am very disinclined to change counsel but there are instances where it is necessary. If you have a breakdown in the attorney/client relationship, please contact me. Do not wait until a trial is imminent. If a new attorney could not be expected to be ready for trial, I will not be able to administratively assist you. The judge must decide such matters.

#### **WHO IS ELIGIBLE TO PARTICIPATE WITH THE DEFENDER PROGRAM?**

An attorney licensed to practice law in the State of Michigan, with Genesee County as their principal office is eligible to receive appointments. Exceptions may be made, based on need.

#### **WHO DO I CALL FOR HELP!!!!**

The Defender Program is a division of Circuit Court Administration. Please contact me regarding the retention of experts before filing a motion for the same, problems with a case or any other matter that you conclude requires my attention. My telephone number is 424.4355 or [bmenear@co.genesee.mi.us](mailto:bmenear@co.genesee.mi.us).

Kim Neville is the defender specialist that is responsible for most of the day to day operations of the program. Kim prepares calendars for the assignment of counsel, receives the orders of appointment and does a variety of other important tasks that make the office efficiently operate. Kim can be reached at 257.3484 or [kneville@co.genesee.mi.us](mailto:kneville@co.genesee.mi.us). Her office is on the 2nd floor of the circuit court (enter from law library - west side).

Mary Langdon is one of the financial division supervisors. She processes vouchers and coordinates the effort to collect amounts owing on protective orders for the reimbursement of attorney fees. She is located on the 1st floor, Juvenile Records and Reimbursement Office. Mary can be reached at 237.6121 or [mlangdon@co.genesee.mi.us](mailto:mlangdon@co.genesee.mi.us).

#### **FORENSIC REFERRALS**

It is the responsibility of the defense attorney to see that any orders for competency and/or criminal responsibility are properly filled out and judge's signature obtained. The district courts send the orders to the Forensic Center. Inquire before you leave the district court as to whether anything further is required of you. If you have a forensic evaluation order that is issued by a circuit court judge, provide the information to Kim Neville and she will process the order.

A copy of the police report must be made available to the Forensic Center. Kim Neville can usually email the police report from the FTP server. She will contact you if she is unable to send the police report via the FTP server.

File appropriate motions for competency and/or criminal responsibility evaluations in the district court, whenever possible.

Forms may be available at the district courts and are available in the SCAO formbook.

### **PATERNITY CASES - MILITARY**

If you get assigned to a paternity case with the defendant in the US Military Service, please talk to Mary about the manner in which you get paid. We do not get a lot of these cases. However, the billing procedure is different than the customary indigent case.

### **A FINAL NOTE**

The Genesee County Circuit Court reserves the right to remove attorneys from the eligibility list.

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