

**STATE OF ALABAMA
TWENTY-THIRD JUDICIAL CIRCUIT**

**INDIGENT REPRESENTATION PLAN
FOR DEPENDENCY CASES**

- ADOPTED 2011 -

I. AUTHORITY

Pursuant to Act 2011-678 of the Alabama Legislature (hereinafter referred as “the Act”), the Twenty-Third Judicial Circuit of Alabama adopts the following plan for furnishing representation in juvenile dependency cases to eligible persons in state courts.

II. TERMS

- A. Local Indigent Defense Advisory Board: The Local Indigent Defense Advisory Board, which is authorized by the Act to determine the most efficient and effective method for providing indigent defense services in this Circuit, shall consist of the presiding judge of the circuit court; the president of the Huntsville-Madison County Bar Association; and three (3) local attorneys appointed by the bar commissioners for the Twenty-Third Judicial Circuit. Each member shall serve a term of one (1) year and may serve successive terms.
- B. Indigent Representation Administrative Committee: The Indigent Representation Administrative Committee (which shall administer this plan and the Indigent Representation Plan for Criminal Cases) shall consist of a circuit court judge, a district court judge and five (5) local attorneys, who shall be appointed as herein provided. Each member shall serve a term of three (3) years and may serve not more than two (2) consecutive terms.
- C. Indigent Representation Panel for Dependency Cases: The Indigent Representation Panel for Dependency Cases shall consist of attorneys designated and approved, as hereinafter provided, to represent eligible persons in juvenile dependency cases in the Twenty-Third Judicial Circuit.

III. STATEMENT OF POLICY OBJECTIVE

The objective of this plan shall be to attain the goal of equality for all persons before the law. This plan shall be administered to ensure that no person eligible for indigent representation in juvenile dependency cases pursuant to Alabama law shall be deprived of representation due to indigence. The panel of attorneys serving under this plan shall be limited to those who have adequate skill and experience to effectively and efficiently represent eligible persons. The Local

Indigent Defense Advisory Board and the Indigent Representation Administrative Committee will facilitate training and professional development of panel members and will ensure the proper use of public funds expended for indigent representation.

IV. PERSONS ENTITLED TO APPOINTMENT OF COUNSEL

Representation shall be provided for any financially eligible person entitled to representation pursuant to applicable law, including the following:

1. A parent or putative parent whose child is the subject of a dependency petition filed on behalf of the Alabama Department of Human Resources;
2. A child who is the subject of a dependency petition filed on behalf of the Alabama Department of Human Resources, where applicable law entitles the child to representation by an attorney;
3. A child who is the subject of a dependency petition filed on behalf of the Alabama Department of Human Resources, where applicable law entitles the child to representation by a guardian *ad litem*; and
4. Any other person eligible for appointment of counsel in a dependency case under applicable law.

V. INDIGENT REPRESENTATION ADMINISTRATIVE COMMITTEE

A. Authority: Subject to the supervision of the Circuit and District Courts Court of the Twenty-Third Judicial Circuit, the administration of this plan and governance under the Act creating this plan shall be delegated to an Indigent Representation Administrative Committee.

B. Members: The Indigent Representation Administrative Committee shall consist of a circuit court judge, a district court judge and five (5) local attorneys.

1. Circuit Judge: The initial appointment of a circuit court judge shall be made by the presiding judge of the Circuit Court.
2. District Judge: The initial appointment of a district court judge shall be made by the presiding judge of the District Court.
3. Attorneys: The initial appointment of attorneys shall be made by the Local Indigent Defense Advisory Board.

4. After initial appointments are made, the Indigent Representation Administrative Committee shall appoint its successor members.
- C. Chairperson: The committee shall select from its members a chairperson who shall serve a one (1) year term. The chairperson of the committee may serve successive terms.
- D. Responsibilities: The committee shall have principal responsibility for managing the indigent representation panel for dependency cases, as follows:
1. Reviewing attorney applications for admission to the panel and selection of attorneys to serve on the panel.
 2. Removal of attorneys from the panel for poor service, misconduct, incompetence, failure to comply with continuing education requirements or other good cause.
 3. Review of vouchers for reasonableness and compliance with guidelines and applicable law, at the request of a judge or a panel attorney.
 4. Maintaining a list of attorneys willing to serve as mentors to other panel members.
 5. Identifying and defining problems in the administration of the panel and making recommendations for improvement to the Local Indigent Defense Advisory Board.
 6. Determining the proper number of attorneys authorized to serve on the panel.
 7. Other actions necessary for the efficient management and regulation of the panel.
- E. Members of the committee shall serve without compensation. Nothing contained in this plan shall be construed as creating or vesting any right or privilege not specifically delineated herein.

VI. INDIGENT DEFENSE PANEL FOR DEPENDENCY CASES

- A. Membership:

1. Attorneys applying for panel membership shall be members of the Huntsville-Madison County Bar Association.
2. Panel attorneys shall have trial experience, shall have knowledge of juvenile dependency law or shall otherwise demonstrate the ability to provide constitutionally adequate representation to eligible persons.
3. The panel shall consist of attorneys approved by the Indigent Representation Administrative Committee and a majority vote of the active judges of the Circuit Court of the 23rd Judicial Circuit.
4. Unless terminated for cause, membership on the panel shall be for a period of one (1) year. Panel members may apply for, and may be approved by the Indigent Representation Administrative Committee for, reappointment to successive terms.
5. Effective on January 1, 2013, each applicant seeking initial panel membership or reappointment to panel membership, other than an applicant who has been admitted to practice law in the State of Alabama for less than one (1) year, shall certify to the Indigent Representation Administrative Committee that he or she has attended at least two (2) hours of continuing legal education focused on juvenile dependency law or procedure during the calendar year preceding application for panel membership. Failure of an attorney to comply with this requirement may result in denial of or removal from panel membership.
6. An attorney may be removed from the panel by the Indigent Representation Administrative Committee or a majority of the active judges of the Circuit Court of the 23rd Judicial Circuit for poor service, misconduct, incompetence, failure to comply with continuing education requirements or other good cause.
7. The Indigent Representation Administrative Committee or the Huntsville-Madison County Bar Association shall maintain a list of attorneys willing to serve as mentors to other panel members. A mentoring attorney shall provide any reasonable assistance to an attorney seeking mentoring services. Such assistance may include advice regarding the application of rules of law, evidence, procedure, professional responsibility or professional courtesy.

VII. ASSIGNMENT OF CASES TO PANEL MEMBERS

- A. Appointment of counsel shall be made on a random basis except when, due to the nature or complexity of a case, or when the interests of justice require, a judge or referee directs the appointment of a particular panel member.
- B. The Circuit Clerk for the 23rd Judicial Circuit shall provide each judge and referee a list of panel members, from which each judge or referee of the Juvenile Court shall randomly draw counsel for appointment.
- C. If a panel member has repeatedly declined appointments, the Indigent Representation Administrative Committee shall make such inquiry as it deems appropriate, and take such action as it deems proper, including removal of a member from the panel.

VIII. APPOINTMENT OF COUNSEL

A. Duties of Judges and Referees

- 1. A judge or referee shall promptly appoint counsel for any person eligible under this plan or applicable law unless the court finds that the person has knowingly, intelligently and voluntarily waived his or her right to counsel.
- 2. Appointment of counsel shall be made randomly. A judge or referee may, however, appoint a particular panel member, not randomly selected, when the nature or complexity of a case or the interests of justice so require. An eligible person shall not have the right to choose his or her appointed counsel.
- 3. If the court finds that a person for whom counsel has been appointed is financially able to retain counsel, the court may terminate the appointment of counsel.
- 4. If the court finds that a person represented by retained counsel is unable to pay his or her attorney's fee, the court may appoint counsel in accordance with the procedures set forth in this plan.
- 5. If a person having a right to counsel is unrepresented and seeks to waive his or her right to counsel, the court shall make appropriate inquiry regarding such proposed waiver. If the court finds that such person is financially able to retain counsel but declines to do so, the court shall certify that fact in the record of the proceedings.

6. A judge or referee before whom a case is pending may, in the interest of justice, substitute one appointed counsel for another at any stage of proceedings.

B. Duties of the Circuit Clerk

1. If a person having a right to counsel desires to have counsel appointed, the circuit clerk shall provide him or her an application form which shall be completed, signed under oath or affirmation and filed with the clerk.
2. The clerk shall promptly provide the application for appointed counsel to a judge or referee, who shall appoint counsel for an eligible person pursuant to this plan.

C. Duties of Counsel

1. Counsel appointed to represent a person pursuant to this plan shall provide the client the same quality of legal services, skill and representation as retained counsel would provide.
2. Attorneys appointed pursuant to this plan shall conform to the highest standards of professional conduct, including provisions of the Alabama Rules of Professional Conduct and all guidelines for professional conduct promulgated by the Alabama State Bar.
3. Unless excused by court order, counsel appointed pursuant to this plan shall continue to represent his or her client throughout all judicial proceedings in this circuit. Appointed counsel shall appear personally at all proceedings and address court schedule conflicts in order of priority.
4. In appointed counsel obtains non-privileged information that a client is financially able to pay, in whole or in part, for representation, counsel shall so advise the court.
5. Counsel shall advise each client of the right to appeal a judgment and the right to appointment of counsel on appeal. If a defendant expresses a desire to appeal, counsel shall assist the defendant in filing notice of appeal. Appointed counsel shall not be obligated to represent such defendant on appeal, but shall assist the defendant in applying for appointment of appellate counsel.

IX. COMPENSATION

Payment of fees and expenses to counsel appointed under this plan, including payment for investigative, expert or other services, shall be made in accordance with applicable law and such rules, regulations and guidelines as have been or may be prescribed by the legislature, the Office of Indigent Defense Services or other legal authority. No appointed counsel may request or accept other payment, directly or indirectly, for representation of an eligible person, unless such payment is approved by court order.

X. EFFECTIVENESS

This plan shall become effective upon approval by the Local Indigent Defense Advisory Board and shall supersede all prior indigent appointment plans for dependency cases in this circuit.

The circuit clerk and the executive director of the Huntsville-Madison County Bar Association shall maintain copies of this plan and make the same available to any interested person.

ADOPTED AND APPROVED this 22nd day of November, 2011.

Local Indigent Defense Advisory Board
23rd Judicial Circuit
State of Alabama

Karen K. Hall
Presiding Judge and Chair

Elizabeth Beason Moore
President, Huntsville/Madison County Bar
Association

Jerry S. Barclay
Member

John A. Brinkley, Jr.
Member

Patrick M. Tuten
Member