

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

**INDIGENT DEFENSE PLAN**

- 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 state courts to any eligible person.

**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. Criminal Justice Administrative Committee. The Criminal Justice Administrative Committee 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 Defense Panel. The Indigent Defense Panel shall consist of attorneys designated and approved, as hereinafter provided, to provide indigent defense services in the Twenty-Third Judicial Circuit.

**III. STATEMENT OF POLICY OBJECTIVE**

The objective of this plan shall be to attain the goal of equality before the law for all persons. This plan shall be administered to ensure that each person accused of crime, or otherwise eligible for indigent representation pursuant to Alabama law, shall not 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 Criminal Justice Administrative Committee will facilitate training and professional development of panel members and will ensure the proper use of public funds expended for indigent defense.

#### 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 person charged with a felony.
2. A person charged with a misdemeanor, unless the charge is a petty offense for which neither a sentence of incarceration nor a suspended sentence will be imposed.
3. A person alleged to have committed an act of juvenile delinquency.
4. A person charged with violation of probation.
5. A person who is under arrest, when such representation is required or authorized by law.
6. A person who is entitled to appointment of counsel in parole proceedings.
7. A person who is entitled to appointment of counsel under the Sixth Amendment to the United States Constitution or the Alabama Constitution of 1901.
8. Any other person eligible for appointment of counsel under applicable law.

#### V. CRIMINAL JUSTICE ADMINISTRATIVE COMMITTEE

- A. Authority: Subject to the supervision of the Circuit Court of the Twenty-Third Judicial Circuit, the administration of this plan and governance under the Act creating this plan shall be delegated to a Criminal Justice Administrative Committee as established herein.
- B. Members: The Criminal Justice 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 Criminal Justice Administrative Committee shall appoint its successor members.
- C. Chair: The committee shall select from its members a chairperson who shall serve a one year term. The chairperson of the committee may serve successive terms.
- D. Responsibilities: The committee shall have principal responsibility for managing the indigent defense panel, as follows:
1. Reviewing attorney applications for admission to the panel and selection of attorneys to serve on the panel.
  2. Designation of attorneys to panel tiers.
  3. Removal of attorneys from the panel for poor service, misconduct, incompetence, failure to comply with continuing education requirements or other good cause.
  4. Review of vouchers for reasonableness and compliance with guidelines and applicable law, at the request of a judge or a panel attorney.
  5. Maintaining a list of attorneys willing to serve as mentors to other panel members.
  6. Identifying and defining problems in the administration of the panel and making recommendations for improvement to the Local Indigent Defense Advisory Board.
  7. Determining the proper number of attorneys authorized to serve on the panel.
  8. 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

### A. Membership:

1. Attorneys applying for panel membership shall be members of the Huntsville-Madison County Bar Association.

2. Panel attorneys shall have criminal trial experience, knowledge of criminal 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 Criminal Justice Administrative Committee and a majority vote of the active judges of the Circuit Court of the 23<sup>rd</sup> Judicial Circuit.
4. Unless terminated for cause, membership on the panel shall be for a period of one year. Panel members may apply for, and be approved by the Criminal Justice Administrative Committee for, reappointment to successive terms.
5. Effective 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 for less than one (1) year, shall certify to the Criminal Justice Administrative Committee that he or she has attended at least four (4) hours of continuing legal education focused on criminal law or criminal 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 Criminal Justice Administrative Committee or a majority of the active judges of the Circuit Court of the 23<sup>rd</sup> Judicial Circuit for poor service, misconduct, incompetence, failure to comply with continuing education requirements or other good cause

B. Panel Tiers:

1. The panel shall consist of two (2) tiers, identified as Tier A and Tier B. The Criminal Justice Administrative Committee shall assign each panel member to one of those tiers, based upon the training, experience and skill of the attorney. The committee shall assign more experienced and skilled attorneys to Tier A, and less experienced attorneys to Tier B.
2. The Criminal Justice Administrative Committee may classify certain Tier A attorneys for complex cases, including capital prosecutions or other extraordinarily difficult cases. Those attorneys shall be denominated as Tier A-Capital. Other Tier A attorneys shall be denominated as Tier A-General.
3. Any attorney seeking to qualify for appointment in capital cases and to be denominated as Tier A-Capital counsel shall certify to the Criminal Justice Administrative Committee that he or she has attended at least twelve (12)

hours of continuing legal education focused on the defense of capital cases in every two (2) calendar years.

4. No provision of this plan shall be construed to create any new legal right or claim for or on behalf any criminal defendant. Notwithstanding any provision of this plan to the contrary, the appointment of counsel in capital cases shall be controlled by applicable statutes and judicial decisions.
5. Attorneys designated as Tier A-General counsel may be appointed to any case, with a preference for appointment to serious felony offenses.
6. Tier B shall be regarded as a developmental tier to which less experienced attorneys may be assigned. Those attorneys should be appointed in misdemeanor or simple felony cases while developing skills and experience.
7. A Tier B attorney may apply to the Criminal Justice Administrative Committee for designation to Tier A, describing any special circumstances, experience or qualifications which may justify such designation.
8. A Tier B attorney may be appointed to assist a Tier A attorney in any case, without compensation, with the approval of the Tier A attorney.
9. The Criminal Justice Administrative Committee shall maintain a list of attorneys willing to serve as mentors to other panel members. The committee may direct a Tier B attorney to seek the mentoring assistance of a Tier A or Tier B attorney as a condition of appointment to represent eligible persons pursuant to this plan. A mentoring attorney shall provide any reasonable assistance to such Tier B attorney. 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. Within the limitations regarding panel tiers as provided herein, appointment of counsel shall be made on a random basis except where, due to the nature or complexity of a case, a judge directs the appointment of a particular panel member.
- B. The Court Administrator's Office shall provide each judge a computerized list of panel members, divided by tiers, from which each judge shall randomly draw counsel for appointment.

- C. If a panel member has repeatedly declined appointments, the Criminal Justice 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

- 1. A judge 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 from an appropriate tier panel. A judge may, however, appoint a particular panel member, not randomly selected, where 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 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 Court Administrator's Office

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

3. In the event a grand jury returns a true bill or a no bill regarding a person represented by appointed counsel, the clerk shall promptly notify the person or his or her attorney in writing of such grand jury action.

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 criminal defendant of the right to appeal a judgment of conviction and sentence, and the right to appointment of counsel on appeal. If a defendant expresses a desire to appeal, counsel shall file, or 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

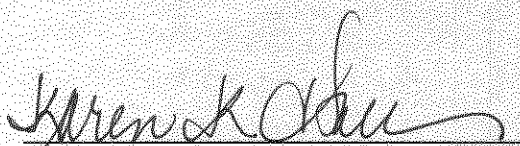
Payment of fees and expenses to counsel appointed under this plan, including payment for investigative, expert or other services, shall be made in accordance with applicable law and such rules, regulations and guidelines as have been or may be prescribed by the legislature, the Office of Indigent Defense 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

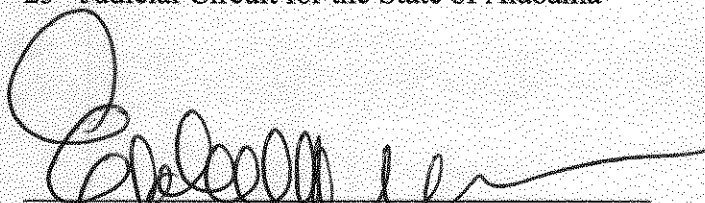
This plan shall become effective when approved by the Local Indigent Defense Advisory Board and a majority of the active judges of the 23<sup>rd</sup> Judicial Circuit, and shall supersede all prior indigent defense appointment plans of this circuit.

The Court Administrator 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.

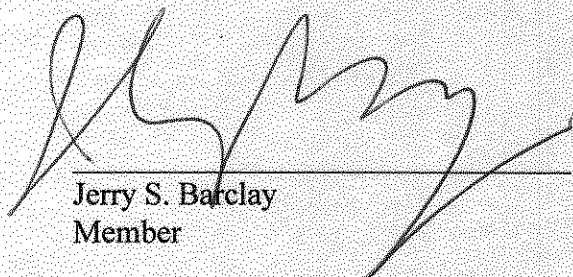
Local Indigent Defense Advisory Board  
23<sup>rd</sup> Judicial Circuit for the State of Alabama



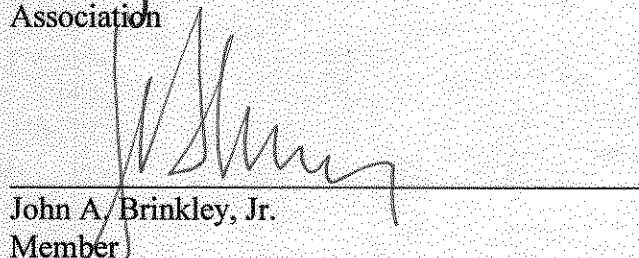
Karen K. Hall  
Presiding Judge and Chair



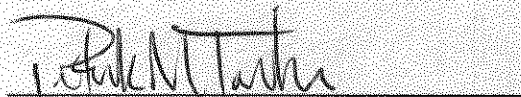
Elizabeth Beason Moore  
President, Huntsville/Madison County Bar Association



Jerry S. Barclay  
Member



John A. Brinkley, Jr.  
Member



Patrick M. Tuten  
Member