

**V. Attorney Selection Process for Adults (Rotation and Participation in the Regional Public Defender for Capital Cases)**

**A. Misdemeanor and Non-Capital Felony Cases**

- i. The appointing authority will identify which of the appointment lists, discussed in the Section III (attorney qualifications), is most appropriate based on the accusations against the defendant and will appoint the attorney whose name is first on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order.
- ii. Good cause may include:
  1. The defendant requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available;
  2. The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or
  3. Other good cause exists for varying from the list.
- iii. Once appointed, an attorney's name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

**B. Capital Felony Cases**

- i. The Regional Public Defender for Capital Cases shall be appointed to all capital felony cases unless good cause exists to appoint private counsel.
  1. If a co-defendant requests appointment of counsel and is determined to be indigent, the Appointing Authority shall appoint counsel pursuant to the standards and procedures stated in this Section.

2. If private counsel is appointed to a co-defendant, rather the Regional Public Defender for Capital Cases, co-counsel will be appointed using the standards and procedures stated in this Section.
- ii. The Regional Public Defender for Capital Cases may refuse to accept appointment to a case if:
    1. A conflict of interest exists;
    2. The Office has insufficient resources to provide adequate representation;
    3. The Office is incapable of providing representation in accordance with the rules of professional conduct;
    4. Acceptance of the appointment would violate the maximum allowable caseloads established for the office; or
    5. The Office shows other good cause for refusing appointment.
  - iii. The Appointing Authority shall immediately contact the attorneys appointed by phone, fax, e-mail or in person and notify the attorneys of the appointment and the last known location of the defendant.

C. Judicial Removal from Case:

- i. The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:
  1. Counsel's failure to appear at a court hearing;
  2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
  3. Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;

4. Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
  5. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
  6. The defendant requests an attorney, other than trial counsel, for appeal; or
  7. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.
- ii. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.