

#### **Rule 44-I. Assignment of Counsel**

(a) APPOINTMENT AUTHORITY. When a person qualifies for appointment of counsel under D.C. Code § 11-2601 (2012 Repl.), or is otherwise entitled to have counsel appointed, a judge or magistrate judge must make the appointment from a list of attorneys and qualified law students approved by the court under D.C. Code §§ 11-2601 to -2609 (2012 Repl. & 2017 Supp.).

(b) NOTIFICATION OF AVAILABILITY FOR APPOINTMENT. Attorneys available for appointment on a particular day must so advise the Defender Services Office by 7:00 a.m. on that day.

(c) VACATING APPOINTMENT. If an attorney appointed under this rule is not present when the case is called for arraignment or presentment, the judge or magistrate judge may vacate the appointment and, if the attorney is absent without adequate excuse, he or she may be subject to further sanction.

(d) SCHEDULING OF TRIALS. Attorneys appointed under this rule must not schedule on any day more trials than may be permitted by administrative order of the Chief Judge.

(e) LEGAL ASSISTANCE BY LAW STUDENTS.

(1) *Practice.*

(A) Any law student admitted to the limited practice of law under District of Columbia Court of Appeals Rule 48 may engage in the limited practice of law in the Superior Court in connection with any criminal case or matter (not involving a felony), on behalf of any indigent person who has consented in writing to that appearance, provided that a “supervising lawyer,” as defined in Rule 44-I(e)(3), has approved such action and also entered an appearance.

(B) Any law student eligible under these rules may also appear in any criminal case or matter on behalf of the United States or the District of Columbia with the written approval of the United States Attorney or the Attorney General for the District of Columbia, or their authorized representatives, and the “supervising lawyer.”

(C) In each case, the written consent and approval referred to above must be filed in the record of the case.

(2) *Requirements and limitations.*

(A) The law student must be enrolled in a clinical program. A clinical program for purposes of this rule is a law school program for credit of at least 4 semester hours held under the direction of a full-time faculty member of the law school, or an adjunct professor for a consortium of law schools, whose primary duty is the conduct of such program in which a law student obtains practical experience in the operation of the District of Columbia legal system by participating in cases and matters pending before the courts or administrative tribunals. A student need not be so enrolled if that student has satisfactorily completed a clinical program and is continuing in the representation of a program's client.

(B) The law student must be registered and certified by the Admissions Committee of the District of Columbia Court of Appeals as eligible to engage in the limited practice of law as authorized by District of Columbia Court of Appeals Rule 48.

(C) The law student must not schedule more than one trial for any single date except with the court's permission.

(3) *Supervision.* The “supervising lawyer” referred to in this rule must:

(A) Be a lawyer whose service as a supervising lawyer for the clinical program is approved by the law school in which the law student is enrolled and who is an active practitioner of law in this court;

(B) Assume full responsibility for guiding the student's work in any pending case or matter or any case-related activity in which the student participates, and for supervising the quality of that student's work;

(C) Assist the student to the extent necessary, in the supervising lawyer's professional judgment, to insure that the student participation is effective;

(D) Sign each pleading, memorandum, or other document filed by the student, and appear with the student at each court appearance, except that the supervisor need not be present for a non-adversary matter so long as he or she is available to the court within one-half hour;

(E) Not schedule more than 3 cases for trial on any given day for law students whom he or she is supervising.

(4) *No CJA Funds.* No CJA funds may be paid to any student or supervising lawyer in any case in which a law student is appointed under this rule.

(f) **SUSPENSION OR REMOVAL.**

(1) *Grounds.*

(A) An attorney may be suspended or removed from the list of attorneys maintained under D.C. Code § 11-2602 (2012 Repl.) for willful falsification, by commission or omission, of any material information in any voucher, requisition, or other document relating to the District of Columbia Criminal Justice Act; for receipt of other payments in violation of D.C. Code §§ 11-2604 to -2606 (2012 Repl. & 2017 Supp.); or for any other conduct that violates the provisions of the District of Columbia Criminal Justice Act, the Plan for Furnishing Representation to Indigents Under the District Of Columbia Criminal Justice Act or any guidelines promulgated by the Superior Court Board of Judges for the implementation of the Plan.

(B) Any person or organization authorized under D.C. Code § 11-2605 (2012 Repl.) to provide investigative, expert, or other services may be suspended or removed from further participation in the District of Columbia Criminal Justice Act Program for willful falsification by commission or omission, of any material information in any voucher, requisition, or other document relating to the District of Columbia Criminal Justice Act; for receipt of other payments in violation of D.C. Code § 11-2606 (2012 Repl.); or for any other conduct that violates the provisions of the District of Columbia Criminal Justice Act, the Plan for Furnishing Representation to Indigents Under the District Of Columbia Criminal Justice Act or any guidelines promulgated by the Superior Court Board of Judges for the implementation of the Plan.

(2) *Power to Suspend or Remove.* The power to suspend or remove an attorney or any other person or organization appointed or otherwise employed under the District of Columbia Criminal Justice Act is vested in the Chief Judge or the Chief Judge's designee.

(3) *Procedures.* No order of suspension or removal may be entered unless the respondent has been given an opportunity to be heard. Notice of the hearing date together with a clear and concise statement of the complaint against the respondent must be served by certified mail not less than 21 days before the date of the hearing. In

the conduct of the hearing, the committee may follow such procedures as it deems appropriate.

## COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2002 amendments to the Federal Rules of Criminal Procedure. In addition, what was formerly section (d), entitled "Appointment Considerations," has been deleted as unnecessary, and the remaining sections have been redesignated accordingly.

New section (d) of this rule replaces section (e) of the former rule. To promote trial date certainty, the maximum number of trials an attorney may schedule per day will be governed by administrative order.

Section (f) has been updated to reflect that, under the 2009 Plan for Furnishing Representation to Indigents Under the District of Columbia Criminal Justice Act, the power to suspend or remove an attorney is vested in the Chief Judge or the Chief Judge's designee.

## COMMENT

This Rule has been added to clarify the procedure to be followed in appointing counsel.

For a case interpreting the Sixth Amendment right to appointment of counsel, see *Argersinger v. Hamlin*, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972).

Subsection (g)(2) of the Rule does not address the power to remove an attorney from the list of attorneys authorized to practice under the Criminal Justice Act. The power to remove an attorney from the list is vested in the Joint Committee For Judicial Administration pursuant to section II A(2) of the Plan For Furnishing Representation To Indigents Under the District of Columbia Criminal Justice Act.