

RULE ON APPOINTMENT OF COUNSEL FOR
INDIGENT DEFENDANTS IN CRIMINAL CASES

- I. **PURPOSE.** This rule is to establish a process for the appointment of private attorneys to represent indigent defendants as provided in Neb. Rev. Stat. §§ 29-3901 to 29-3908.
- II. **PREFACE/APPLICABILITY.** Sarpy, Cass, and Otoe Counties all have Public Defender Offices. Sarpy County also maintains a contract with two separate law firms which each serve as Alternate Public Defenders. Cass County maintains a contract with one law firm to serve as Alternate Public Defender. As a result, the necessity to appoint private counsel for indigent defendants does not frequently occur. The following rule shall not apply to criminal proceedings in which the Court appoints the Public Defender, Alternate Public Defender, or the Nebraska Commission on Public Advocacy.
- III. **GENERAL.**
 - A. Appointments of private attorneys shall be made on an impartial and equitable basis;
 - B. The appointments shall be distributed among the attorneys on a rotation system;
 - C. Cases shall be assigned to attorneys of sufficient experience, skill, and competence to render effective assistance of counsel to defendants;
 - D. Complex cases shall be assigned to attorneys with sufficient levels of experience and competence to provide effective representation; and
 - E. Less-experienced attorneys should be assigned cases which are within their capabilities, but should be given the opportunity to expand their experience under supervision.
- IV. **COURT-APPOINTED ATTORNEY LIST.**
 - A. Each County Court shall maintain a court-appointed attorney list from which attorneys shall be appointed to represent indigent defendants. In the event that a District Court judge is required to appoint a private attorney, the District Court judge shall utilize the list maintained by the County Court.
 - B. Attorneys may contact the County Court in each county and request the Clerk Magistrate to place them on or remove them from the court-appointed list.
 - C. The County Court shall make the court-appointed list of attorneys available upon request.
- V. **METHOD OF SELECTION FROM COURT-APPOINTED LIST.**
 - A. The Court will generally attempt to appoint attorneys from the court-appointed attorney list on a rotational basis, subject to the Court's sole discretion to make exceptions due to:

1. the nature and complexity of the case;
 2. an attorney's experience;
 3. the nature and disposition of the defendant;
 4. a language consideration;
 5. a conflict of interest;
 6. the availability of an attorney, taking into consideration an immediate need to address issues involved in the case;¹
 7. geographical considerations;²
 8. attorney's foreign language proficiency; and
 9. other relevant factors that may be involved in a specific case.
- B. If the Court, in its sole discretion, varies from the rotation basis, it may appoint any qualified attorney, whether or not the attorney is on the court-appointed attorney list.
- C. If an attorney on the court-appointed attorney list is appointed outside the rotational basis established, that attorney's name shall be placed at the end of the rotation.

VI. REMOVAL AND REINSTATEMENT FROM APPOINTMENT LIST.

- A. Judges will monitor attorney performance on a continuing basis to ensure the competency of attorneys on the list. An attorney may be removed from the appointment list by a majority vote of County and District Court judges.
- B. If an attorney is under consideration for removal from the list, written notification will be given indicating the concerns with his or her performance which give rise to consideration for removal and the attorney will be given the opportunity to respond, in writing or in person, before a final decision is made.
- C. An attorney who has been removed from the list may be considered for reinstatement by a majority vote of the judges, after the deficiencies contained in the notice have been resolved.

Rule approved October 22, 2014.

¹ The Court may appoint an attorney present in court when a defendant appears and wants to speak with an attorney immediately to discuss a resolution of the case. The Court may also appoint an attorney who is known to be available on the next regularly scheduled court date.

² The Court may appoint an attorney who is in the closest geographical proximity to the court before considering the appointment of another attorney in order to avoid the costs of travel time for attorneys and mileage expenses, for the convenience of the defendant in consulting with a local attorney, and for the convenience of the Court in scheduling cases.