

22 NYCRR PART 678

ASSIGNED COUNSEL PLAN, SECOND, ELEVENTH AND THIRTEENTH JUDICIAL DISTRICTS

Section 678.1. Introduction

This Part is hereby adopted to establish rules governing the assigned counsel plan for the Second, Eleventh, and Thirteenth Judicial Districts and to establish rules and standards regulating the selection, designation, performance and professional conduct of individual panel plan attorneys appointed to furnish representation for indigent defendants in criminal proceedings.

Section 678.2. Previous Measures Continued

The assigned counsel plan and the criminal trials and appeals panels, under the plan previously established for the Second and Eleventh Judicial Districts pursuant to article 18-B of the County Law, shall continue in effect subject to the provisions of this Part.

Section 678.3. Administrator

The administrative authority over the assigned counsel plan for the Second, Eleventh, and Thirteenth Judicial Districts shall be delegated to the administrator of the assigned counsel plan. The administrator shall administer the plan in accordance with applicable statutes, the assigned counsel plan, this Part, the rules of the Appellate Division, and with the procedures formulated by the advisory committee and approved by the Appellate Division.

Section 678.4. Advisory Committee

(a) There shall be established an assigned counsel plan advisory committee for the counties of Kings, Queens and Richmond, which shall be composed of 18 members, as follows:

(1) six members of the judiciary, who at the time of their initial appointment shall be either Judges of the Criminal Court of the City of New York or Justices of the Supreme Court, and one of whom shall be a Supervising Judge of the Criminal Court or his or her designee and another of whom shall be an Administrative Judge of the Supreme Court or his or her designee;

(2) two representatives of the bar associations in each county;

- (3) a member of the faculty of an accredited law school; and
- (4) five additional members, at least one of whom shall not be an attorney.

The committee members shall be appointed by the Presiding Justice for a term of three years and may be reappointed for additional three-year terms. The administrator of the assigned counsel plan shall sit as an *ex officio* members of the advisory committee.

(b) The members of the advisory committee as volunteers are expressly authorized to participate in a State-sponsored program within the meaning of [section 17 of the Public Officers Law](#).

Section 678.5. Duties of the Advisory Committee

Subject to the supervision of the Appellate Division, the advisory committee shall establish procedures for appointment and reappointment of attorneys to serve on the panels; periodic evaluation of attorneys; training of attorneys; investigating complaints made against members of the panels; suspension and removal of attorneys from the panels; and periodic review of the plan.

Section 678.6. Eligibility Requirements

(a) General requirements are:

(i) Admission to the New York State Bar for at least two years. The requirement may not be waived except in the following circumstances; where an attorney has been admitted in another state more than two years and has exceptional criminal law experience in that other state.

(ii) Attorneys may only be a member of one trial court panel and one parole panel in one county, except an attorney may be on both the felony panel and the "A" felony panel in the one county. No attorney may be placed on the appellate panels of more than one department, but an attorney may be on the trial panels of a county and the appellate panel of the same or different department.

(iii) An attorney's primary office must be located in the county of the panel or in an adjoining county within New York City which shall be applied as follows: Kings - adjoining counties: New York and Queens; Richmond -adjoining counties: New York and Kings; Queens - adjoining counties: Kings and New York.

(iv) Primary office shall be readily available to clients and families.

(v) No matters involving the attorney shall be pending before a grievance committee.

(b) The advisory committee shall establish the eligibility requirements for the selection to each panel. Additionally, the advisory committee shall establish procedures and guidelines for review of all applications.

Section 678.7. Bar Association Screening Committee

Each of the county bar associations shall continue to maintain a screening committee which will review the applications of attorneys and recommend qualified attorneys to be added to the panels. The review by the committees shall be in accordance with the eligibility requirement and guidelines established by the advisory committee. The recommendations will be forwarded to the administrator for his or her review and approval to the appropriate panel.

Section 678.8. Designation of Panels

The Appellate Division shall designate the panel for each county from attorneys recommended by the bar association screening committees and approved by the administrator. Appointments to the panels shall be for a term of three years, but successive designations may be made.

Section 678.9. Periodic Evaluation of Panel Members

The advisory committee shall periodically evaluate the qualifications of panel attorneys and shall establish procedures to recertify these attorneys to individual panels. The advisory committee shall not recommend for reappointment any attorney whose past performance the committee determines to be unsatisfactory. Judicial members of the advisory committee may participate in the determination.

Section 678.10. Training and Education

The advisory committee, in cooperation with the administrator, shall establish training and educational programs. It shall determine which programs are mandatory for continued membership on the panels. It shall also, in cooperation with the administrator, establish mentor programs to assist new and current panel members in developing their skills.

Section 678.11. Assignment of Counsel

Assignment of counsel by the Family Court, Supreme Court or Surrogate's Court to represent indigent adults in proceedings pursuant to [section 262 of the Family Court Act](#), shall be made from law guardian panels designated pursuant to Part 679 of this Title (The rules of the Appellate Division, Second Department). Attorneys so assigned shall be subject to those court rules including the rules relating to evaluation and removal.

Section 678.12. Suspension and Removal

(a) The administrator may suspend any panel attorney for a violation of the assigned counsel plan's rules or procedures, professional misconduct with respect to assigned counsel cases, or other misconduct which would affect the attorney's ability to properly represent assigned counsel clients.

(b) All attorneys who are so suspended by the administrator for ineffective representation, professional or other misconduct, or other situations which the administrator deems appropriate, may be referred to the advisory committee for further investigation and recommendations.

(c) The advisory committee will develop procedures for investigation and review with respect to complaints against attorneys.

(d) Based upon its finding, the advisory committee may recommend to the Presiding Justice that an attorney be removed or reinstated to a panel. Judicial members of the committee may participate in the recommendation. Such recommendation shall not be required where an attorney is not reappointed at the expiration of his or her term.

(e) The administrator may, for violations of the plan's rules and procedures, recommend to the Presiding Justice that an attorney be removed from the panel.

Section 678.13. Reappointment of Attorney to Panel

(a) Attorney previously denied certification:

(1) An attorney who has previously served on an assigned counsel plan panel and who was denied recertification, may be granted permission to reapply to the assigned counsel plan under the following conditions:

(i) at least one year has elapsed since denial of recertification;

(ii) the attorney submits at least three letters of reference from lawyers who have

served as opposing counsel in litigated matters in the past year;

(iii) the attorney submits at least three letters from judges of courts of record before whom she/he has practiced in the past year;

(iv) the letters referred to in subparagraphs (ii) and (iii) of this paragraph must address at least the following issues: the attorney's trial skills or appellate skills, integrity, knowledge of criminal law, and her/his vigor of advocacy; and

(v) the attorney submits two writing samples, including a brief or motion papers prepared in the past year.

(2) Materials required by paragraph (1) of this subdivision shall be submitted to the advisory committee for the assigned counsel plan.

(3) Upon receipt of the materials required by paragraph (1) of this subdivision, the chairperson shall select a subcommittee of three members to interview the applicant, review the applicant's qualifications and make a recommendation.

(4) The subcommittee shall report to the advisory committee its recommendation and underlying reasons.

(5) Upon review of the subcommittee's report and recommendations, the advisory committee shall decide whether to grant or deny permission to the attorney to reapply to the screening committee of the county bar association.

(b) Attorney previously removed for cause:

(1) An attorney who has previously served on an assigned counsel plan panel and who was removed for cause from the panel must submit a letter to the advisory committee indicating the reason why she/he was removed from the panel and the specific panel to which the attorney seeks appointment.

(2) No letter may be submitted until at least two years have elapsed since the removal of the attorney.

(3) The advisory committee shall consider the request to reapply and, in the event permission is granted, the attorney shall submit materials required in subparagraphs (a)(1)(ii), (iii), (iv) and paragraph (2) of this section to the screening committee of the county bar association.

(c) Attorney who has become inactive:

(1) An attorney who has previously served on the assigned counsel plan panel and who resigned or was removed because of inactivity for a period of three years, may be reinstated by the administrator or at the discretion of the administrator, referred to the advisory committee provided:

(i) at least one year has elapsed since leaving the panel; and

(ii) the attorney submits a letter to the administrator stating the reasons she/he left the panel, details of her/his professional work since leaving the panel, a certificate of good standing and a statement that there are no pending disciplinary matters, and that she/he did not have any disciplinary matters during the time she/he was off the panel.

(2) The administrator at her/his discretion may refer the request to the advisory committee for its review, if the administrator believes a more in-depth review of the attorney should be conducted.

(3) The advisory committee shall consider the request and if it decides more information is required it can request the attorney to submit the information required in subparagraphs (a)(1)(ii), (iii), (iv) and (v) of this section.

(4) The advisory committee can grant or deny the request to be reinstated. If permission to reapply is denied pursuant to subdivision (a), (b) or (c) of this section, a new request may not be submitted for at least one year.

Section 678.14. Annual Evaluations

On June 30th of each year, commencing with June 30, 1991, the advisory committee shall submit to the Appellate Division an evaluation of the operation of the plan and the training programs, and recommendations as to procedures, if any, which should be adopted to improve the performance of the plan and the training programs.

Section 678.15. Annual Reports

An annual report of the operation of the plan shall be filed by the Appellate Division with the Chief Administrator of the Courts.

Section 678.16. Construction

Nothing contained in this Part shall be construed to limit the powers of the Appellate Division, the Presiding Justice, or the administrator of the assigned counsel plan, otherwise granted pursuant to law.