

Supreme Court

No. 2004-02

**EXECUTIVE ORDER
FAMILY COURT
INDIGENT COUNSEL**

Pursuant to the authority vested in me by G. L. 1956 (1985 Reenactment) § 8-15-2, and in order to provide competent representation, to ensure that the distribution of court appointments is made in a fair and equitable fashion, to provide a uniform and efficient system for making such appointments, and to protect the public interest, it is hereby ordered that the Family Court maintain a process for appointing qualified attorneys to represent indigent persons who are entitled to state-funded legal representation.

In order to achieve the above-mentioned goals, legal representation of indigent persons in the Family Court may be provided by:

1. Contractual agreement with a state agency, state or local bar association, non-profit organization, bar advocate group, or any other organized group of attorneys formed to afford representation to indigent defendants; and/or
2. Establishment of rotating lists of private attorneys who may be appointed on a case-by-case basis or as rotating duty attorneys.

To establish rotating lists, the Chief Judge of the Family Court shall accept the requests of private attorneys to be assigned to cases that fall within the court's jurisdiction, determine if said attorneys are qualified for the assignments requested in accordance with the criteria set forth below, and assign those found qualified to the panels for the cases requested. Such requests shall be made on forms provided by the court and shall be accompanied by an affidavit, averring to compliance with the qualifications for said appointment and agreeing to report forthwith by supplemental affidavit any changes in circumstances from those set forth therein.

To remain on a panel, attorneys shall submit a request for recertification to the Mandatory Continuing Legal Education Office. Such requests shall be on forms also provided by the court and shall be filed by July 1st of each year. Such requests must demonstrate that the attorney has fulfilled the continuing education requirements set forth below by completing courses that have been approved by the court for this purpose. Attorneys may utilize carry over credits from the preceding year as currently allowed by the Mandatory Continuing Legal Education Office.

Appointments from the respective panels shall be made only after the filing of written certification by the Office of the Public Defender of the person's inability to pay for counsel and a conflict of interest by the office in accepting this person as a client. Appointments from the guardian ad litem panel shall be made only after written certification of a conflict of interest by the Office of the Court Appointed Special Advocate. No payments shall be made for any services performed in the absence of a written certification of conflict in accordance with this paragraph.

Appointments from the panels shall be made in rotation. However, in the discretion of the judge/magistrate, an attorney who has been previously appointed to represent a party may be appointed out of rotation to represent that party in any matter arising out of the same transaction or in other circumstances where savings of time and expense may be achieved. Any other deviation from the rotating system shall be occasioned only when specialized expertise, conflicts of interest, or emergency needs are factors. When deviations do occur, such reasons shall be noted by the judge/magistrate or clerk in the case file.

Court appointed counsel shall provide representation in a case throughout all stages of adjudication in the Family Court. This shall include representation in any termination of parental rights action arising out of a petition of dependency/neglect/abuse in cases in which there is a continuing conflict of interest with the public defender or other contracting agency.

HEARINGS INVOLVING PRIVATE APPOINTED COUNSEL

It shall be the policy of the Family Court to give priority to appointed counsel on all court calendars so that waiting time is reduced to a minimum. The purpose of this policy is to control the cost of appointed counsel through efficient scheduling and the prompt hearing of cases.

QUALIFICATIONS FOR COURT APPOINTMENT

GENERAL PREREQUISITES: To qualify for any court appointment, an attorney shall be required (1) to be a member of the Rhode Island Bar; (2) to have in effect and show proof of legal malpractice insurance in a minimum amount of \$100,000 per claim/\$300,000 aggregate with a carrier licensed within the State of Rhode Island; (3) in matters that may involve the handling and managing of funds, to acquire bonding by a surety bond in an amount equal to the total funds being managed; and (4) to be available to act as a mentor for attorneys seeking to qualify for court appointment.

The categories of cases for which separate panels shall be created and maintained in the Family Court and the specific qualifications for appointment to each, shall be as follows:

PREREQUISITE: Annual completion of three hours of continuing legal education in family law and procedure with an emphasis on the specific area of appointment.

1. Guardian ad litem for child protection and wayward/delinquency cases
 - a. No additional requirements beyond the annual completion of three hours of continuing legal education in family law and procedure.
2. Dependency/neglect/abuse cases
 - a. Prior representation of any party in at least three neglect or abuse cases from initiation to completion of the action, or
 - b. Prior representation of any party in at least three dependency/ abuse/neglect cases from initiation to completion of the action as associate counsel under the supervision of a mentor attorney.

3. Termination of parental rights cases

- a. Prior representation of any party in at least three trials to a verdict, one of which must involve a termination of parental rights, or
- b. Prior representation of any party in at least three trials to a verdict, one of which must involve a termination of parental rights as associate counsel under the supervision of a mentor attorney.

4. Wayward/delinquency cases

- a. Prior representation of any party in at least three wayward/ delinquency cases from initiation to completion of the action, or
- b. Prior representation of any party in at least three wayward/ delinquency cases from initiation to completion of the action as associate counsel under the supervision of a mentor attorney.

5. Waiver hearings/certification hearings/jury trials

- a. Prior representation of any party in at least three jury trials to a verdict, or
- b. Prior representation of any party in at least three jury trials to a verdict as associate counsel under the supervision of a mentor attorney.

6. Violation of court orders for child and/or spousal support

- a. Member of the Rhode Island Bar for at least one year.
- b. One year of litigation experience in the Family Court.

7. Adult Criminal Cases

PREREQUISITE - Attorneys who are appointed to this panel shall complete annually six hours of continuing legal education in criminal law and procedure.

- a. Member of the Rhode Island Bar for at least three years.
- b. Prior representation of any party in at least three felony trials to verdict, or
- c. Prior representation of any party in at least three felony trials to verdict as associate counsel under the supervision of a mentor attorney.
- d. Prior representation of any party in at least three Family Court trials involving either a child abuse or neglect case to verdict or decision.

FEE SCHEDULE

The rates of compensation to be paid by the court to court-appointed counsel shall not differentiate between in-court and out-of-court time. In addition to the fees set forth below, counsel shall be entitled to all reasonable expenses of litigation including cost of transcripts, expert witness fees, investigators' fees, and fees for service of subpoenas in those instances where subpoenas have not been served by court order without cost. Application for expert witness authorization may be made ex parte without notification to the Attorney General or other adverse parties.

The thresholds and flat fees set by this schedule shall apply to all the time spent and all the hearings required in a particular case to reach adjudication and shall include all post-disposition efforts. In cases wherein the fees sought are less than the threshold, approval for payment shall be given by the judge before whom the matter was disposed. Where the fees sought are above the threshold, the judge at disposition shall make a recommendation regarding the advisability of exceeding the threshold, but the final determination of payment shall be made by the Chief Judge of the Family Court.

The fee schedule for Family Court cases shall be as follows:

1. Guardian ad litem	\$30/hour	
2. Dependency/neglect/ abuse and wayward/ delinquent cases	\$30/hour	\$1,000 threshold
3. Termination of parental rights cases	\$30/hour	\$1,500 threshold
4. Adult criminal cases/ jury trials	\$35/hour	\$2,500 threshold
5. Reviews	\$60 flat fee per review, to include preparation, waiting, and court time	
6. Arraignments	\$30/hour	In the event of multiple arraignments, no more than a total of \$100 for all arraignments
7. Child/spousal support cases	\$30/hour	

This fee schedule shall be reviewed biennially.

REQUESTS FOR PAYMENT

Attorneys shall submit requests for payment on a form provided by the court. Such requests shall be submitted only after disposition of or withdrawal from a case. However, payment for representation in dependency/neglect/abuse cases may be submitted after adjudication of the allegations, and representation at the review stage in dependency/neglect/abuse matters may be compensated after each hearing. When requests for payment for additional hearings post-disposition/adjudication are submitted, they must include a current tally of all previous payments requested. Final requests for payment on a case must be so indicated. Requests shall be submitted within thirty days of the disposition/adjudication or review hearing.

This Executive Order shall take effect on April 1, 2004 and shall effectively supersede Executive Order No. 2000 – 2 as it pertains to the appointment of counsel to represent indigent litigants in the Family Court.

Entered as an Executive Order of this court this 19th day of March 2004.

ENTER:

By Order,

S/S
Frank J. Williams
Chief Justice

S/S
Clerk