

CITY OF WOODSTOCK, GEORGIA

COUNCIL POLICY MANUAL

EFFECTIVE DATE: 9/15/2016

POLICY NO. 1000-0001 INDIGENT DEFENSE POLICY

1. CREATION OF POLICY:

There is hereby created and approved by the Mayor and City Council of the City of Woodstock, Georgia the governing authority of Woodstock, a policy for the representation of indigent defendants in criminal cases heard in Woodstock Municipal Court.

2. DECLARATION OF POLICY:

It is the policy of the governing authority to provide the constitutional guarantees of the right to assistance of counsel and equal access to the courts to all citizens in criminal cases and to provide:

- (a) Defense services for indigent persons accused of crimes;
- (b) Compensation for counsel of indigent persons accused of crimes;
- (c) Guidelines to insure that indigent persons receive a fair trial;
- (d) A system to insure that the responsibility to provide fair defense to indigent persons is met;
- (e) That independence of counsel is insured;
- (f) For defense counsel training to promote economy and fair representation; and
- (g) Reasonably early entry into indigent cases by counsel so that the indigent accused shall be represented prior to any critical stage of the prosecution.

3. THE ADMINISTRATOR OR DESIGNEE FOR THE POLICY:

- (a) The administration of the system for providing legal representation for indigent defendants in criminal cases shall be the responsibility of the Administrator or Designee of the Indigent Defense Policy, hereinafter referred to as the Administrator or Designee. The Administrator or Designee shall be an employee of the City of Woodstock and shall be appointed by the City Manager to serve in this capacity. The Administrator or Designee shall perform such duties and assignments as are prescribed by the City of Woodstock and, in addition to those specified herein, shall allow or assist a person claiming to be indigent and without

- counsel immediately to complete an application for appointment of an attorney and a certificate of financial resources for a determination of indigency.
- (b) The financial eligibility of a person applying for an appointed lawyer shall be determined by the Administrator or Designee of the Indigent Defense Policy.
 - (c) Upon a determination of indigency, the Administrator or Designee shall appoint an attorney to represent that defendant and shall notify the attorney, the indigent defendant, the Solicitor, and the Custodian of the jail if defendant is still in custody, of the appointment. The original authorization of appointment shall be filed with the Municipal Court Clerk's office file along with the original accusation or warrant; a copy of the authorization shall be forwarded to the lawyer appointed to represent the defendant, the indigent defendant himself, and the Solicitor.
 - (d) A defendant who is brought before a judicial officer on his/her court date shall be advised of his right to appointed counsel; is permitted orally to request the appointment of counsel; and be questioned as to his financial eligibility. Upon determination made by the Administrator or Designee of the eligibility of the defendant, a lawyer may be appointed immediately for that defendant without the requirement of a written application. In such case, notice shall be given as specified above.

4. POWERS AND DUTIES OF THE INDIGENT DEFENSE POLICY ADMINISTRATOR OR DESIGNEE:

COUNSEL:

- (a) The Administrator or Designee shall create and maintain a list or roster of private attorneys who shall be qualified to represent defendants in criminal cases and who shall be appointed to do so according to the following criteria:
 - (1) Appointment of private attorneys shall be made on an impartial and equitable basis;
 - (2) The cases shall be distributed among the attorneys to insure balanced work loads through a strict rotation system;
- (b) All members of the State of Georgia Bar Association who desire to practice in the Courts of the City of Woodstock are subject to being included on the list or roster of attorneys to whom indigent criminal defense cases can be appointed.
- (c) The Administrator or Designee shall operate the policy so as to insure that the counsel appointed for indigent defendants shall be politically autonomous and free from influence, guidance, or control from any other authority in the discharge of his or her professional duties within the bounds of the law and the code of professional responsibility.
- (d) The Administrator or Designee shall select lawyers to represent criminal defendants and shall be monitored and assessed. Indicators of performance are:
 - (1) Early entry into representation of the client;

- (2) Vigorous and independent representation of the client;
 - (3) Participation in training activities and continuing legal education; and
 - (4) Effective and reasonable use of time and resources.
- (e) In selecting lawyers to participate in the Indigent Defense Policy, the Administrator or Designee shall satisfy her/himself that the lawyer selected has:
- (1) Conducted his professional work in an ethical manner;
 - (2) Licensed and in good standing with the State Bar of Georgia; and
 - (3) Entered into a contract in the form approved by the Woodstock City Council.
- (f) The Roster of Attorney's shall be reviewed annually by the Administrator and amended as necessary.

5. THE ROLE OF LAW ENFORCEMENT:

Any law enforcement authority having custody of any person shall:

- (a) Allow a person claiming to be indigent and without counsel to complete an application for an attorney and certificate of financial resources and forward that application to the Administrator or Designee of the Indigent Defense Policy for a determination of indigency or not;
- (b) Advise detained persons of their right to have counsel and if they cannot afford a lawyer that one will be appointed to assist them;
- (c) Accomplish these procedures within a reasonable time after arrest and detention; and
- (d) Attempt to contact the Administrator or Designee for the completion of an application for an attorney and certificate of financial resources.

6. FINANCIAL ELIGIBILITY:

- (a) Eligible accused persons include all applicants for an attorney with net income below a level set by the Georgia Indigency Defense Council according to Federal Health and Human Services guidelines and they are revised periodically. See the table of HHS Poverty Guidelines: <https://aspe.hhs.gov/poverty-guidelines> or contact the Administrator for a copy.
- (b) The following special needs of a family unit may be deducted from net income in determining eligibility:
 - (1) Child care expenses for working custodial parent;
 - (2) Legally required support payments to dependents, including child support;
 - (3) Unusual, excessive, or extraordinary medical or other expenses.
- (c) Definitions:
 - (1) "Net income" shall include only a client's take home pay, which is the gross income minus those deductions required by law or as a condition of employment;

- (2) "Family unit" includes the defendant, spouse (if living together), any minor children who are unemployed and living at home, and any infirm or permanently disabled person living with the defendant for whom the defendant has assumed financial responsibility. The income of a minor child who is attending school full time, but has after school employment or does odd jobs, shall not be attributed to or included in the income of the family unit. Other persons, if living in the same household, with the defendant, may be deemed a member of the family unit.
- (d) Regardless of prima facie eligibility on the basis of income, a person who has sufficient assets that are easily converted to cash by sale or mortgage may not be qualified for representation if it would not impose a substantial financial hardship to convert those assets to cash.
- (e) Counsel may be appointed for any accused who is unable to obtain counsel due to special circumstances such as emergency, hardship, or a documented refusal of the case by members of the private bar because of financial inability to pay legal fees.

7. APPOINTMENT OF COUNSEL:

- (a) Counsel shall be appointed for every eligible person in custody within a reasonable period of time of arrest or detention.
- (b) A person released from custody requesting an attorney, who has not been appointed a lawyer, shall be notified before arraignment of the right to receive Court appointed counsel and the procedure to be followed to have eligibility determined and counsel appointed.
- (c) A determination of indigent status of a criminal defendant will be made within a reasonable period of time of arrest for all defendants who have not made bond, and immediately following request for application for all other defendants. This determination will be made by the Administrator or Designee using the form set out in USCR 29.3 and the standard of eligibility set out in O.C.G.A. §17-12-10 and USCR 29.6 Uniform Eligibility Guidelines. An attorney appointed shall be notified by telephone or in writing within a reasonable period of time of the appointment.

8. RESPONSIBILITIES OF COUNSEL:

- (a) An attorney appointed to represent an indigent defendant shall contact the defendant within a reasonable period of time after receipt of the appointment, especially if the defendant is in custody.
- (b) Counsel shall actively represent his client at every stage of the criminal proceeding.
- (c) Counsel shall represent his client vigorously within the bounds of the law and ethical conduct.

- (d) Counsel shall at all times perform his role as counsel independently.
- (e) Counsel shall responsibly manage and account for his time in rendering services under the policy.

9. RATES OF COMPENSATION:

Hourly rates: Lawyers will be paid \$45.00 per hour for out-of-court time reasonably spent in the investigation and preparation of the case; and will be paid \$65.00 per hour for in-court time, including, but not necessarily limited to, time reasonably expended at calendar calls, arraignments, motion hearings, and actual trial time.

- (a) The Administrator or Designee will review and authorize for payment of the vouchers submitted by appointed attorneys for amounts not to exceed \$300.00 per case.
- (b) In the event of a voucher which exceeds the guideline maximum set forth above, the Administrator or Designee may call on the attorney submitting that voucher to justify that portion of the voucher in excess of the proposed fee guideline.
- (c) In the event that the attorney is unable to justify the voucher to the satisfaction of the Indigent Defense Administrator or Designee, then the Administrator or Designee shall seek to find a compromise figure acceptable to the City and the attorney.
- (d) In the event that the Indigent Defense Policy Administrator or Designee and the attorney submitting the voucher cannot resolve or compromise their differences regarding the payment of the fee, then the voucher will be submitted to the trial judge, or in the case of a guilty plea to the sentencing judge, who shall review the voucher for payment and resolve the fee dispute, taking into account, among other things, the nature and complexity of the case and the legal and factual issues involved. The decision of the trial judge shall be final and not subject to review in any other place.

10. REIMBURSEMENT OF ATTORNEY'S FEES BY DEFENDANT:

- (a) All attorneys appointed under this policy to represent criminal defendants shall be paid from city funds under the provisions of this policy.
- (b) When the sentencing judge deems it appropriate under O.C.G.A. §17-12-10 and 11 or §17-12-40 that a defendant should reimburse the city for the attorney's fees and expenses incurred under this policy, the Court may order that reimbursement to the city as part of the judgment of conviction and sentence in the case.