

## **Supreme Judicial Court Rule 1:07: Fee Generating Appointments and the Maintenance of Appointment Dockets in all Courts**

### Preamble

The Justices understand the importance of allowing judges the flexibility of selecting appointees based on the particular expertise needed in a given case. In recognition of the necessity to safeguard judicial discretion, a waiver from the requirement of successive appointments has been included in Rule 1:07. In making an appointment, a judge may select a qualified person who is not on the list or who is not next in order on the list by making a brief notation of the reasons for the selection.

The goal of this rule is to assure that all fee-generating appointments made by the courts of the Commonwealth are made on a fair and impartial basis with equal opportunity and access for all qualified candidates for appointments. The Justices have concluded that the fairest way to accomplish this goal, and at the same time avoid favoritism or the appearance of favoritism, is by requiring each court to create lists of qualified candidates and then generally make appointments from those lists in rotation or sequential order.

(1) Annual Publication. At the beginning of each fiscal year, the chief justice of each Trial Court department and the chief justices of the appellate courts shall submit to the Chief Justice for Administration and Management (CJAM) a listing of the types of fee-generating appointments made in their department or court and the qualifications for those appointments. The CJAM shall compile the listings into a unified report which shall be published annually by the CJAM. The report shall include a description of the educational, professional, and other qualifications required for each type of appointment. The report shall state the method by which a person may apply to be considered for each particular type of appointment. It shall also include a statement that appointments of counsel for indigent defendants in criminal matters and for parties in certain non-criminal matters are governed by the Committee for Public Counsel Services (CPCS). An address and telephone number for interested persons to receive information on CPCS appointments shall be included in the report. This annual publication shall be accompanied by a statement from the Supreme Judicial Court that the appointments in the report are open to all qualified persons without regard to race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.

(2) Court Lists. Every individual court making fee-generating appointments shall maintain a list of persons eligible for each type of appointment made by the court. The list shall be generated by the court or, where applicable, by CPCS. All court-generated lists shall be open to all qualified candidates and shall not be restricted to a fixed number of candidates. The method for removing individuals from a list shall be the responsibility of CPCS, in the case of CPCS-generated lists, and of the CJAM, in the case of court-generated lists. The lists shall be public.

(3) Successive Appointments. Each court appointment shall be made from the list maintained pursuant to section (2) of this rule, except as otherwise provided in section (4). Appointments from the list shall be made successively, except that, if an appointment is not made in successive

order, the judge (or other person) making the appointment shall provide a brief written statement of reasons for not following the order of the list. For appointees compensated by CPCS, such written statement shall be kept by the Clerk, Register or Recorder in a separate file marked "CPCS appointments." A judge may direct that an appointment made successively from the list be entered administratively by the clerk, register, or recorder.

(4) Persons Not On List. If a judge appoints a person not on the list maintained pursuant to section (2), the judge (or other person) making the appointment shall provide a brief written statement of reasons for not appointing from the list.

(5) Appointment Docket. All clerks, registers, and recorders, for trial and appellate courts, shall establish and maintain, currently indexed, as part of the public records of the court open during regular business hours to public inspection, an appointment docket with respect to the appointment by the court of each fee-generating appointment, excluding appointees compensated by CPCS. The appointment dockets shall include the following:

(a) guardian ad litem,

(b) investigator appointed pursuant to G. L. c. 208, § 16 ,

(c) appraiser in any estate estimated to have gross assets in excess of \$100,000,

(d) commissioner to sell real estate,

(e) appellate court conference counsel,

(f) master or special master,

(g) counsel in any civil matter,

(h) monitor for the administration of antipsychotic medications,

(i) investigator in care and protection proceedings,

(j) title examiner,

(k) administrator, trustee, guardian, conservator, or receiver, whose appointment was not prayed for by name in a petition, pleading, or written motion, and any guardian or conservator who is an attorney, social worker or other social service professional unrelated to the ward by blood or marriage,

(l) any other fee-generating appointment not compensated by CPCS and not otherwise excluded by this section. The appointment of a guardian ad litem to serve process under G. L. c. 215, § 56B , shall not be entered on the appointment docket. The appointment of an executor, administrator, trustee, guardian, conservator or receiver shall not be entered on the appointment docket except as required by section (5)(k). Appointments shall be entered on the appointment docket regardless of the anticipated source, if any, of payment to the appointee.

(6) Data Collection. Such docket shall contain at a minimum the following:

(a) the docket number and, if the case file is available for public inspection or if access to the information is not otherwise prohibited, the name of the case,

(b) the date of the appointment,

(c) the name of the appointee,

(d) the position to which appointed,

(e) by whom the appointment was made,

(f) a notation if the appointment was not made successively from the court's list or if the appointee was a person not on the list, and

(g) the amount of any payment received and the source thereof (party, estate, or Commonwealth) or whether payment was waived or declined.

(7) Payments. No payment shall be made or received on account of any appointment required to be recorded in the appointment docket until a statement under the penalties of perjury, certifying the services provided, amount of payment, and itemization of expenses, is filed with the clerk, register, or recorder, to be placed with the papers in the case. No person holding an appointment required to be recorded in the appointment docket under section (5) of this rule shall make any payment to himself or herself until such payment is approved by the court.

(8) Compliance. Each appointment made under this rule shall include language on the document of appointment itself that section (7) of this rule must be complied with. After July 1, 2000, no person whose appointment is subject to this rule shall accept reappointment unless he or she has filed a certification that all fee reports for payments received in the previous fiscal year have been filed.

(9) Implementation. The CJAM shall promulgate, subject to the approval of the Supreme Judicial Court, such uniform practices as are necessary to implement this rule.

(10) Alternative Dispute Resolution Exclusion. The provisions of this rule are not applicable to fee-generating appointments made pursuant to Rule 1:18, Uniform Rules on Dispute Resolution.

<http://www.mass.gov/courts/case-legal-res/rules-of-court/sjc/sjc107.htm>