

120-1-10

**Appointment systems and attorney qualifications.**

To qualify for reimbursement, attorneys and the systems used to appoint attorneys must meet the requirements of this rule.

(A) Appointment systems. Pursuant to Rule 8 of the Rules of Superintendence for the Courts, courts must adopt a local rule for the appointment of counsel that ensures the equitable distribution of appointments among persons on each list. Such appointment systems must also:

- (1) Be independent from individual influence by a member of the judiciary, anyone involved in prosecuting criminal cases, or any elected official.
- (2) Ensure that appointments are distributed as widely as possible among members of the bar who qualify to be on an assignment list, by utilizing a rotary system designed to pair the seriousness and complexity of a case with attorneys who meet qualifications outlined below for appointment to such a case. On rare occasion it may be in the interest of justice for a court to select an individual attorney whose expertise or experience is particularly well suited to a given case or client.
- (3) Have a written application process for inclusion, review, advancement in qualifications, and removal from the appointed counsel list.
- (4) Not require an attorney to join or pay a fee to any organization as a condition of inclusion in the appointment system.
- (5) Maintain a record of all appointments of counsel, the qualification of counsel to accept cases based upon degree and severity of the charge, and a record of attorneys' refusals to accept appointments.

(B) Misdemeanors. Attorneys appointed to represent indigent clients in misdemeanor cases must have:

- (1) Within two years prior to the appointment, completed a minimum of six hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, in criminal practice and procedure; or
- (2) Successfully completed a clinical education program focusing on criminal defense; or
- (3) At least one year of experience as an attorney.

(C) Misdemeanor OVI cases. Within two years prior to the appointment, attorneys appointed to represent indigent clients in misdemeanor OVI cases must have

completed a minimum of six hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, focused on OVI practice and procedure.

(D) Training requirements for all felony cases. Attorneys appointed to represent indigent clients in felony cases must meet the following training requirements:

- (1) Within two years prior to the appointment, completion of a minimum of twelve hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, in criminal practice and procedure.
- (2) Within two years prior to the appointment to a felony OVI case or a felony in which OVI is an element, completion of a minimum of six hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, focused on OVI practice and procedure.

(E) Felonies of the fourth and fifth degree and unclassified felonies other than aggravated murder and murder. Where the defendant is charged with a felony of the fourth or fifth degree, or an unclassified felony other than aggravated murder or murder, counsel must have at least one year of experience as an attorney practicing in the area of criminal law.

(F) Felonies of third degree. Where the defendant is charged with a felony of the third degree, counsel must have:

- (1) At least one year of experience as an attorney practicing in the area of criminal law; and
- (2) Within six years preceding the appointment, prior experience as lead trial counsel in at least one criminal jury trial, or as co-counsel in at least two jury trials.

(G) ~~Aggravated murder without death penalty specifications, murder, and felonies~~ Felonies of the first and second degree. Where the defendant is charged with ~~a aggravated murder without a death penalty specification, murder, or~~ a felony of the first or second degree, counsel must have:

- (1) At least three years of experience as an attorney practicing in the area of criminal law; and
- (2) Within ten years preceding the appointment, prior experience as lead trial counsel in two criminal jury trials, at least one of which involved felony charges, or as lead counsel in one felony jury trial and as co-counsel in two additional jury trials.

(H) Aggravated murder without death penalty specifications, murder, and life Life sentence cases. Where the defendant is charged with aggravated murder without death penalty specification, murder, or any felony that carries a potential sentence of life imprisonment, whether eligible or ineligible for parole, counsel must have:

- (1) At least five years of experience as an attorney practicing in the area of criminal law; and
- (2) Within ten years preceding the appointment, prior jury trial experience as lead counsel in five felony jury trials, at least three of which were felonies of the first or second degree; or lead counsel in three jury trials, at least one of which was a felony of third degree, and co-counsel in an additional five jury trials, at least three of which were felonies of the first or second degree.

(I) Death specification cases.

- (1) Where the juvenile or adult defendant is charged with aggravated murder with death penalty specifications, or has been convicted and sentenced to death, any attorney appointed for trial, appellate, post-conviction, or habeas corpus representation must be certified by the Ohio supreme court commission on appointment of counsel in capital cases.

~~(2) Lead trial counsel must have:~~

- ~~(a) At least five years of criminal litigation experience; and~~
- ~~(b) Experience as lead counsel for the defense in the jury trial of at least one capital case, or experience as co-counsel for the defense in the jury trial of at least two capital cases; and~~
- ~~(c) Within ten years preceding the appointment, experience as lead counsel in the jury trial of at least one murder or aggravated murder case; or within five years preceding the appointment, experience as lead counsel in three aggravated or first or second degree felony jury trials.~~

~~(3) Trial co-counsel must have:~~

- ~~(a) At least three years of criminal litigation experience; and~~
- ~~(b) Within ten years preceding the appointment, experience as co-counsel in one murder or aggravated murder jury trial; or within five years preceding the appointment, experience as lead counsel in one first or second degree felony jury trial; or within five years preceding the appointment,~~

~~experience as lead or co-counsel in at least two felony jury or civil jury trials.~~

(J) Juvenile bindover cases. Where a case originated in juvenile court and was transferred to adult court, counsel must have:

- (1) The requisite experience under this rule to be appointed to a juvenile case based upon the highest degree of the charge in the case; and
- (2) The requisite experience under this rule to be appointed to an adult case based upon the highest degree felony charged; or
- (3) Co-counsel who meets the adult-case training and experience requirements must also be appointed.

(K) Juvenile cases.

- (1) Unruly, truancy, violation of a court order, and misdemeanors. Where the case involves a child alleged to be unruly, truant, in violation of a court order, or delinquent by reason of committing an act that would be a misdemeanor if committed by an adult, counsel must have:
  - (a) Within two years prior to the appointment, completed a minimum of six hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, in juvenile delinquency practice and procedure; or
  - (b) Successfully completed a clinical education program focusing on juvenile law; or
  - (c) At least one year of experience as an attorney.
- (2) OVI cases. Within two years prior to the appointment, attorneys appointed to an OVI case, or a case in which OVI is an element, involving a juvenile must have completed a minimum of six hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, focused on OVI practice and procedure.
- (3) Training requirements for all felony cases. Where the case involves a child alleged to be delinquent by reason of committing an act that would be a felony if committed by an adult, within two years prior to the appointment, the attorney must have completed a minimum of twelve hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education,

in criminal practice and procedure, at least six of which must be in the area of juvenile delinquency practice and procedure.

- (4) Felonies of the third, fourth, and fifth degree. Where the case involves a child alleged to be delinquent by reason of committing an act that would be a felony of the third, fourth, or fifth degree if committed by an adult, counsel must also have at least one year of experience as an attorney practicing in the area of juvenile delinquency law.
- (5) Felonies of the first and second degree. Where the case involves a child alleged to be delinquent by reason of committing an act that would be a felony of the first or second degree if committed by an adult, counsel must have:
  - (a) At least two years of experience as an attorney practicing in the area of juvenile delinquency law; and
  - (b) Within ten years preceding the appointment, prior experience as lead trial counsel in at least two bench trials in juvenile court, at least one of which involved a felony-level charge, or as lead counsel in one felony bench trial and as co-counsel in two additional bench trials.
- (6) Bindover and serious youthful offender cases. Where a petition to transfer to common pleas court or a motion for bindover proceeding has been filed, or where a serious youth offender proceeding has been initiated, counsel must have:
  - (a) The requisite experience under this rule to be appointed to a juvenile case based upon the highest degree of the charge in the case; and
  - (b) The requisite experience under this rule to be appointed to an adult case based upon the highest degree felony charged; or
  - (c) Co-counsel who meets the adult-case training and experience requirements must also be appointed.
- (7) Murder and aggravated murder cases. Where the case involves a child alleged to be delinquent by reason of committing murder or aggravated murder without specifications, without a motion to bind over, and without a serious youthful offender proceeding, counsel must have:
  - (a) At least three years of experience as an attorney practicing in the area of juvenile delinquency law; and

- (b) Within ten years preceding the appointment, prior experience as lead trial counsel in at least four bench trials in juvenile court, at least three of which involved a felony-level charge, or as lead counsel in three bench trials, two of which involved a felony-level charge, and as co-counsel in three additional bench trials.

(L) Adult appellate cases. For purposes of this section, a case in which an Anders brief was filed may not be counted as prior experience.

- (1) All misdemeanors, and felonies of the fourth and fifth degree. Where the defendant is appealing a conviction of a misdemeanor or of a felony of the fourth or fifth degree, counsel must have:

- (a) Within two years prior to the appointment, completed a minimum of six hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, in criminal or appellate practice and procedure; or

- (b) Successfully completed a clinical education program focusing on appellate practice; or

- (c) At least one year of experience as an attorney.

- (2) Training requirements for felonies of the first, second, or third degree. Where the defendant is appealing a conviction of a felony of the first, second, or third degree, within two years prior to the appointment, counsel must have completed a minimum of twelve hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, in criminal practice and procedure, at least six of which must be in the area of appellate practice.

- (3) Felonies of the third degree. Where the defendant is appealing a conviction of a felony of the third degree, counsel must have:

- (a) At least one year of experience as an attorney practicing in the area of appellate law; and

- (b) Within six years preceding the appointment, filed appeals in three cases resolved by plea, or one appeal of a case that was resolved by trial.

- (4) Felonies of the first and second degree. Where the defendant is appealing a conviction of a felony of a first or second degree, counsel must have:

- (a) At least two years of experience as an attorney practicing in the area of appellate law; and

- (b) Within ten years preceding the appointment, filed appeals in three cases that were resolved by trial.
- (5) Cumulative sentences of twenty-five years or more. Where the defendant is appealing a cumulative sentence of twenty-five years or more, whether eligible or ineligible for parole, counsel must have:
  - (a) At least five years of experience as an attorney practicing in the area of appellate law; and
  - (b) Within ten years preceding the appointment, filed appeals in five cases resolved by trial.
- (6) Bindover and serious youthful offender cases. Where the case involves the appeal of a juvenile case transferred to common pleas court or a serious youthful offender proceeding, counsel must have:
  - (a) The requisite experience under this rule to handle the appeal of a juvenile case based upon the highest degree of the charge in the case; and
  - (b) The requisite experience under this rule to handle the appeal of an adult case based upon the highest degree of felony charged; or
  - (c) Co-counsel who meets the adult-case training and experience requirements must also be appointed.
- (M) Juvenile appellate cases. For purposes of this rule, a case in which an Anders brief was filed may not be counted as prior experience.
- (1) Unruly, truancy, violation of a court order, misdemeanors, and felonies of the third, fourth, and fifth degree. Where the matter involves the appeal of a case where a child has been found to be unruly, truant, in violation of a court order, or delinquent by reason committing an act that would be a misdemeanor or a felony of the third, fourth or fifth degree, counsel must have:
  - (a) Within two years prior to the appointment, completed a minimum of nine hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, in the areas of appellate practice and procedure and juvenile delinquency practice and procedure; or
  - (b) Successfully completed a clinical education program focusing on appellate practice and procedure and a minimum of six hours of continuing legal education in the area of juvenile delinquency practice and procedure; or

- (c) Successfully completed a clinical education program focusing on juvenile delinquency practice and procedure and a minimum of six hours of continuing legal education in the area of appellate practice and procedure.
- (2) Felonies of the first and second degree. Where the matter involves the appeal of a case where a child has been found to be delinquent by reason of committing an act that would be a felony of the first or second degree, counsel must have:
  - (a) Within two years immediately prior to the appointment, completed a minimum of twelve hours of continuing legal education, certified by the Ohio supreme court commission on continuing legal education, at least six of which must be in the area of juvenile delinquency practice, and at least six of which must be in the area of appellate practice; and
  - (b) At least two years of experience as an attorney practicing in the area of juvenile delinquency and appellate law; and
  - (c) Within six years preceding the appointment, filed appeals of three juvenile delinquency cases.
- (3) Bindover and serious youthful offender cases. Where the matter involves the appeal of a case transferred to common pleas court or a serious youth offender proceeding, counsel must have:
  - (a) The requisite experience under this rule to handle the appeal of a juvenile case based upon the highest degree of the charge in the case; and
  - (b) The requisite experience under this rule to handle the appeal of an adult case based upon the highest degree felony charged; or
  - (c) Co-counsel who meets the adult-case training and experience requirements must also be appointed.
- (N) Adult postconviction. Where the defendant has been convicted of an offense, and counsel is appointed to represent the defendant in any stage of a postconviction relief petition or on appeal of the denial of a postconviction relief petition, counsel must have:
  - (1) The requisite experience and training under this rule to serve as trial counsel for the underlying offense; or
  - (2) The requisite experience and training under this rule to serve as appellate counsel for the underlying offense.



- (O) Juvenile postconviction. Where the child has been adjudicated of an offense, and counsel is appointed to represent the child in any stage of a postconviction relief petition or on appeal of the denial of a postconviction relief petition, counsel must have:
- (1) The requisite experience and training under this rule to serve as trial counsel for the underlying offense; or
  - (2) The requisite experience and training under this rule to serve as appellate counsel for the underlying offense.
- (P) Adult community control violation. Where the defendant is charged with a violation of community control, counsel must have:
- (1) The requisite training and experience under this rule to serve as counsel for the underlying offense; or
  - (2) Within the last year served as co-counsel in at least three community control violation proceedings; and
  - (3) Within the last two years, completed a minimum of six hours of continuing legal education, certified by the supreme court of Ohio commission on continuing legal education, in criminal practice and procedure.
- (Q) Juvenile community control and supervised release violation. Where the juvenile is charged with a violation of community control or supervised release, counsel must have:
- (1) The requisite training and experience under this rule to serve as counsel for the underlying offense; or
  - (2) Within the last year served as co-counsel in at least three community control or supervised release violation proceedings; and
  - (3) Within the last two years, completed a minimum of six hours of continuing legal education, certified by the supreme court of Ohio commission on continuing legal education, in juvenile delinquency practice and procedure.
- (R) For purposes of this rule, co-counsel is defined as an attorney who is assisting lead counsel assigned to represent the defendant, who has entered an appearance in the matter, and who has actively participated in the presentation of the case up to and during trial. Co-counsel qualify for reimbursement only in cases where two attorneys are required to be appointed, as in death penalty, bindover, and serious youthful offender cases.

- (S) Prior to or at the time of appointment, and prior to the submission of a bill, a court may submit an attorney's qualification information to the Ohio public defender, in order to ascertain whether counsel qualifies under this rule and is in compliance with the Ohio public defender standards and guidelines for reimbursement.
- (T) Exceptional circumstances. An attorney who does not meet the requirements of this rule may request an exemption for exceptional circumstances and, if approved, may proceed as being qualified. An attorney requesting such an exemption must submit to the Ohio public defender commission materials that demonstrate that high quality, competent representation will be provided. The request and all supporting materials must be submitted at least two weeks prior to a regularly scheduled quarterly meeting of the Ohio public defender commission. Applicants will be notified of the commission's decision within two weeks after the commission's meeting.
- (U) An attorney employed full-time by a public defender office that meets all applicable standards and guidelines promulgated pursuant to Chapter 120. of the Revised Code and all requirements of rule 120-1-06 of the Administrative Code, is exempted from the qualification requirements of this section.
- (V) Courts, county public defender commissions, and joint county public defender commissions may adopt local rules requiring qualifications in addition to the minimum standards established by this rule.

Effective:

Five Year Review (FYR) Dates: 12/1/2020

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Certification

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Date

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