



2021 ANNUAL REPORT

Commission on Appointment of Counsel in Capital Cases

JULY 2022





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Maureen O'Connor
CHIEF JUSTICE

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Jennifer Brunner

JUSTICES

Stephanie E. Hess
INTERIM ADMINISTRATIVE DIRECTOR

Dear Chief Justice and Justices
of the Supreme Court of Ohio,

On behalf of the commissioners, I present the 2021 Annual Report of the Commission on Appointment of Counsel in Capital Cases. The report includes a detailed review of the administration of justice in the appointment of attorneys as counsel for indigent defendants in capital cases pursuant to the Rules for Appointment of Counsel in Capital Cases for calendar year 2021.

Respectfully submitted,

A handwritten signature in blue ink that reads "Ann M. Baronas". The signature is written in a cursive style.

Ann Baronas, Esq.

Chair to the Capital Commission

2021 COMMISSION ROSTER

John Martin, *Chair*

CUYAHOGA COUNTY PUBLIC DEFENDER'S OFFICE

Richard Cline, *Vice-Chair*

OHIO PUBLIC DEFENDER'S OFFICE

Ann Baronas

LAW OFFICE OF ANN BARONAS

Jefferson Liston

LAW OFFICE OF JEFFERSON LISTON, LLC

Hon. Thomas Marcelain

LICKING COUNTY COURT OF COMMON PLEAS

The purpose of the Commission on Appointment of Counsel in Capital Cases is to promote the effective administration of justice in the appointment of attorneys as counsel for indigent defendants in capital cases.

History of Rule

The Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases was established in 1987 pursuant to Rule 65 of the Supreme Court Rules of Superintendence for Courts of Common Pleas. In 1987, the Supreme Court of Ohio adopted Rule 20 of the Rules of Superintendence for the Courts of Ohio. With its adoption, the Supreme Court of Ohio became the first state supreme court to promulgate a rule establishing criteria and procedures for attorneys to become certified to represent indigent defendants in capital cases. The rule also created a five-member Committee to administer the rule and approve all requests for certification. In 2015, Rule 20 was superseded by the [Rules for the Appointment of Counsel in Capital Cases](#) (Appt.Coun.R.).

Commission

The Commission on Appointment of Counsel in Capital Cases (“Capital Commission”) is comprised of five members appointed by the Chief Justice and Justices of the Supreme Court pursuant to Appt. Coun.R. 2.03. The term of a commission member is three years. A commission member is eligible for reappointment but shall not serve more than three consecutive full terms. A former commissioner who has served three consecutive full years is once again eligible for reappointment after a minimum of a one-year break in service. Commissioners serve as volunteers and are not compensated.

Chairperson

John Martin was elected to serve as the Commission chairperson in 2021, and served through the end of the year. Martin is an Assistant Public Defender in the Appellate Division, with the Cuyahoga County Public Defender’s Office.

Ann Baronas was elected to serve as chairperson on Jan. 1, 2022. Baronas has served on the Commission since 2013, and practices in Toledo.

Vice-Chairperson

Richard Cline was elected to serve as vice-chairperson in 2021 and was Chief Counsel in the Death Penalty Department of the Ohio Public Defender’s Office.

Staff Liaison

Tammy White, Attorney Services Manager, serves as the staff liaison to the Capital Commission and has served in this capacity since 2007.

2021 Summary

The Capital Commission convened throughout the year in 2021 to administer the requirements of Appt.Coun.R. including the certification of attorneys who are eligible to be appointed to represent indigent capital defendants. The activities for the calendar year included:

- Certifying attorneys who were eligible to be appointed to represent indigent capital defendants.

- Extending the authorization for attorneys to meet their death penalty continuing legal education (CLE) requirements by live webinars in lieu of a classroom setting.
- Issuing Notices of Revocation of Certification to attorneys who failed to comply with the death penalty training requirements to retain certification.
- Reviewing applications for death penalty training seminars.
- Assisting with the coordination for including appellate advocacy as part of the appellate training at the Ohio State Bar Association (OSBA) and Ohio Association of Criminal Defense Lawyers (OACDL) annual death penalty training seminars.
- Establishing best practices for the representation of indigent defendants in capital cases at all stages to promote a standard of practice for the defense of capital cases in Ohio that ensures constitutionally adequate legal representation for indigent persons facing the possible imposition or execution of a death sentence.

Certification of Counsel

Appt.Coun.R. 5.02 requires the trial court to appoint two attorneys in every capital prosecution where the accused is determined to be indigent. Both attorneys appointed to the case must meet the requirements of Appt.Coun.R. 3. For trial level representation, one of the two attorneys must be “lead” counsel certified under the rule and the second attorney must be “co-counsel” certified. While both certifications have the same training requirements, lead certification requires more criminal litigation experience. At the appellate level, both attorneys must be “appellate” counsel certified.

Appt.Coun.R. 3 contains two requirements for those seeking certification to represent a capital defendant. It first imposes specific experience requirements

for attorneys seeking capital certification. It also requires attorneys to attend specialized CLE seminars to obtain and retain their certification. Both the experience and specialized training requirements have been revised and strengthened over the years, but they remain the core of the rule. The Commission has discretion to certify attorneys who do not strictly meet the requirements of Section 3 when the totality of the applicant’s training and experience satisfies the Commission that the attorney has equivalent experience and training to Section 3’s explicit requirements. This type of “special circumstance” accreditation is only granted after the Commission discusses the applicant’s background during a meeting.

Prior to appointment as counsel for an indigent defendant in a capital case, an attorney shall obtain certification from the Capital Commission pursuant to Appt. Coun.R. 3.01.

In 2021, the Capital Commission certified 10 attorneys to accept appointments as lead trial counsel, trial co-counsel, and/or appellate counsel certification.

The number of attorneys certified to accept appointments in capital cases remains at approximately 300 attorneys. Courts and the public may verify an attorney’s certification by searching the statewide list of attorneys certified to accept appointments in capital cases on the Supreme Court of Ohio [website](#). The search can be conducted by name, county, or certification type.

Defense-of-Capital-Case Training in Response to COVID-19

In the two-year period prior to seeking certification for appointment as trial counsel for indigent defendants in capital cases pursuant Appt.Coun.R. 3.02 or 3.03 and every two years thereafter, an attorney shall complete at least 12 hours of training on the defense of capital cases accredited by the Commission on Appointment of



Counsel in Capital Cases. Those seeking certification for appointment as appellate counsel pursuant to Appt.Coun.R. 3.04, shall complete 12 hours of training on the defense of capital cases, of which at least six hours shall be related to the appeal of capital cases.

Traditionally, attorneys seeking to obtain or maintain capital counsel certification attend one of two in-state CLE programs specifically designed for capital litigants. The OSBA and the OACDL offer these courses annually. Typically, each program provides the required 12 hours of capital-specific training (including six hours of appellate-specific training for attorneys seeking to obtain or maintain capital appellate counsel certification).

Each year, some attorneys seek credit for courses offered by other organizations that generally do not receive advance Capital Commission accreditation. Attorneys who attend these out-of-state, in-person trainings seek Capital Commission CLE credit by submitting an application with a copy of the course materials and course information. The Capital Commission acts upon requests on a course-by-course

basis, holding these courses to the same requirements as employed for advance accreditation. The Capital Commission only considers death-penalty CLE accreditation for courses approved by the Commission on Continuing Legal Education.

Appt.Coun.R. 4.02(B) prohibits the Capital Commission from awarding credit for video replays of previously accredited courses. This is consistent with past Capital Commission practice not to certify programs other than “live,” in-person courses where participants are required to gather in a central location for the requisite hours of classroom-type training (which usually also include smaller breakout sessions). This is the preferred format for death penalty training. Unfortunately, this type of training was not practical during calendar year 2021. Due to COVID-19 and the limited number of in-person activities, the Capital Commission extended the authorization for attorneys to meet their death-penalty CLE requirements using a live webinar format where attendees participated remotely in a live course. While webinar courses do not offer the same opportunity for audience participation

as the traditional classroom–approved courses, they still provide an opportunity for webinar participants to submit questions in real time and for the instructor to address them contemporaneously. The Capital Commission considers the ability to ask questions essential for any death-penalty CLE.

The OSBA and OACDL offered capital-specific CLE webinar courses in 2021, providing Ohio attorneys at least two opportunities to participate in a live webinar from a remote location to comply with the training requirements.

Attorneys who fail to comply with the applicable training requirements of Appt.Coun.R. 4.01 and 4.03 shall have their certification revoked. In 2021, certification was revoked for 34 attorneys who failed to comply with the death penalty training requirements. An attorney may seek reinstatement by submitting a new application demonstrating the attorney has complied with the applicable training requirements of Appt.Coun.R. 4.01 and 4.03 and meets the experience requirement.

Appellate Advocacy Training

In 2021, the Commission continued to work with the OSBA and the OACDL to include an appellate breakout session at each of its death penalty training seminars which focused on effective briefing and oral advocacy in capital cases. The Commission Chair and Vice-Chair presented at the trainings along with Chief Justice O'Connor and Justices of the Supreme Court of Ohio.

Capital Cases

In 2021, the records reflect the Supreme Court of Ohio received a total of 19 notices of capital indictments pursuant to R.C. 2929.021(A). The Supreme Court of Ohio [Capital Indictment Table](#) provides a list of all notices filed with the Supreme Court of Ohio.

The Office of the Ohio Attorney General released the 2021 Capital Crimes State and Federal Cases Report indicating Ohio has issued 341 death sentences, and 56 death row inmates have been executed since 1981 when current Ohio law went into effect. Over that same period, 21 death row inmates have had their death sentence commuted to a lesser sentence.

Relevant Legislation

Last legislative session, the 133rd General Assembly passed House Bill 136 (otherwise known as the “Serious Mental Illness” Bill, hereinafter referred to as the “SMI” bill). On April 12, 2021, this law went into effect in Ohio. Under the SMI bill, people diagnosed with one of four serious mental illnesses who met certain other criteria would be no longer eligible for a death sentence, and, if convicted, are to be sentenced to life in prison without the possibility of parole. People charged with a death-eligible offense could raise the SMI issue at pre-trial. Individuals already sentenced to death prior to April 12, 2021, could challenge their sentence through a petition for post-conviction relief brought within one year of the effective date of the bill.

The eligibility criteria for this SMI exemption is set forth in R.C. 2929.025(A). In short, the test has two prongs: a diagnosis of one of the four enumerated illnesses, and significant impairment of the person’s capacity at the time of the offense. *Id.* The burden is on a petitioner to show they have a serious mental illness under this standard by a preponderance of the evidence. R.C. 2929.025(D).

Under the first prong, the person must have been diagnosed with one of the four serious mental illnesses: schizophrenia, schizoaffective disorder, bipolar disorder, or delusional disorder. *Id.* R.C. 2929.025(A) (1)(a). Under the second prong, the person must show that at the time of the alleged aggravated murder, the serious mental



illness “significantly impaired the person’s capacity to exercise rational judgment in relation to the person’s conduct with respect to either of the following: conforming the person’s conduct to the requirements of law or appreciating the nature, consequences, or wrongfulness of the person’s conduct.” *Id.* R.C. 2929.025(A)(1)(b).

Prior to the end of 2021, two severely mentally ill individuals were removed from death row upon the agreement of the prosecuting attorneys in two different counties. No hearing was necessary in those cases. These individuals were then sentenced to life in prison without the possibility of parole.

2022 Anticipated Projects

In 2022, the Capital Commission will continue to assess progress on identified goals and objectives and pursue activities consistent with its mission. The Committee anticipates working on the following projects:

- Continuing to collaborate with sponsors of death penalty trainings to promote appellate advocacy training.

- Seeking Court approval to publish the best practices for representation by counsel in capital cases and disseminate the document to attorneys certified to accept appointments in capital cases, sponsors of death penalty training seminars, the Ohio Judicial College, Ohio Common Pleas Judges, and to publish on the Supreme Court website.
- Proposing amendments to Appt. Coun.R. to clarify the rule applies to all stages of state capital litigation, including direct appeal and state post-conviction petitions, and to establish standards for the qualifications of lawyers seeking appointment as lead or co-counsel in post-conviction capital cases.

Conclusion

The Capital Commission will continue to take the steps necessary to ensure quality representation for those charged with or convicted of a capital offense.