



2022

Commission on
Appointment
of Counsel in
Capital Cases
Annual Report

March 2023





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**Commission on Appointment
of Counsel in Capital Cases**

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Sharon L. Kennedy

CHIEF JUSTICE

Patrick F. Fischer
R. Patrick DeWine
Michael P. Donnelly
Melody J. Stewart
Jennifer Brunner
Joseph T. Deters

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 2022 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 (Appt.Coun.R.) for calendar year 2022.

Respectfully submitted,

A handwritten signature in blue ink that reads "Ann M. Baronas". The signature is fluid and cursive.

Ann Baronas, Esq.

Chair to the Capital Commission

2022 Commission Roster

Ann Baronas, Esq., Chair

LAW OFFICE OF ANN BARONAS, TOLEDO

Jefferson Liston, Esq., Vice-Chair

LAW OFFICE OF JEFFERSON LISTON, LLC, COLUMBUS

Hon. Thomas Marcelain

LICKING COUNTY COMMON PLEAS COURT, NEWARK

Kimberly Rigby, Esq.

OHIO PUBLIC DEFENDER'S OFFICE, COLUMBUS

Timothy F. Sweeney, Esq.

LAW OFFICE OF TIMOTHY FARRELL SWEENEY, CLEVELAND

Tammy White

Staff Liaison To The Commission

SUPREME COURT OF OHIO, COLUMBUS

The Commission on Appointment of Counsel in Capital Cases is tasked by the Supreme Court of Ohio with the responsibility of helping ensure that the attorneys appointed by courts throughout the State in capital cases are qualified and prepared to assume this responsibility.

Commission

The 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 Commission consists of one public defender, one Common Pleas Judge, and three attorneys who are engaged in the practice of law by representing persons charged with criminal offenses. Nominations are made by the Ohio Public Defender, Ohio Association of Criminal Defense Lawyers, Ohio Metropolitan Bar Association Consortium, Ohio State Bar Association, and the Ohio Common Pleas Judges Association for the Court's consideration and appointment. The term of a commission member is three years, with eligibility for reappointment for three consecutive full terms. After a minimum of a one-year break in service, a former commissioner who has served three consecutive full terms is eligible for reappointment.

Chairperson

Ann Baronas was elected to serve as the Commission chairperson in 2022. Baronas is a criminal defense lawyer in private practice in Toledo.

Vice-Chairperson

Jefferson Liston was elected to serve as vice-chairperson in 2022. Liston is a criminal defense lawyer in private practice in Columbus.

Staff Liaison

Tammy White, Attorney Services Manager, serves as the staff liaison to the Commission.

2022 Summary

The Commission convened regularly in 2022 to administer the requirements of the rules for appointment of counsel in capital cases. The activities for the calendar year included:

- Certifying attorneys who were eligible to be appointed to represent indigent capital defendants;
- Reviewing applications for capital case training seminars to ensure Ohio attorneys are well-trained;
- Extending the authorization for attorneys to meet their capital case 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 capital case training requirements to retain certification;
- Establishing best practices for representation by trial, appellate, postconviction, habeas, and clemency counsel for indigent defendants in capital cases; and
- Proposing amendments to the rules for the appointment of counsel in capital cases to ensure that indigent capital defendants are provided with qualified counsel at all stages of state court litigation, including postconviction proceedings.

Certification of Counsel

Prior to appointment as counsel for an indigent defendant in a capital case, an attorney must obtain certification from the Commission. The Commission ensures that attorneys who apply for certification as trial counsel or as appellate counsel have the experience that qualifies them to handle capital cases in accordance with the standards of the rules for appointment of counsel in capital cases. The rule 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 continuing legal education 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.

In 2022, the Commission certified 15 attorneys to accept appointments as trial counsel and/or appellate counsel. The number of attorneys certified to accept appointments in capital cases throughout Ohio is currently 275. Courts can access a statewide list of attorneys who are certified to accept appointments for indigent defendants in capital cases on the Supreme Court of Ohio website.

Defense of Capital Case Training

The Commission approves the content of the continuing education courses that capital-qualified attorneys must take to become and remain qualified to represent indigent defendants in capital cases. The purpose of the educational certification is to ensure that attorneys handling capital cases are specially equipped to serve clients in this unique area of representation where juries not only determine if a defendant is guilty but must also decide if a death sentence can be imposed. The Commission interacts annually with both the Ohio State Bar Association and Ohio Association of Criminal Defense Lawyers (the two primary sources of capital continuing legal education in Ohio), and regularly teaches at the trainings. The Commission also receives applications from attorneys seeking credit for courses offered by other organizations that generally do not receive advance Commission accreditation. The Commission acts upon these requests on a course-by-course basis, holding these courses to the same requirements for advance accreditation. In addition to the trainings offered by the Ohio State Bar Association and Ohio Association of Criminal Defense Lawyers, the Commission approved capital case trainings offered by the National Association of Criminal Defense Lawyers, and the Administrative Office of U.S. Courts, offering attorneys the ability to comply with the training requirements to retain their certification.

Defense of Capital Case Training by Live-Webinar for 2022

Traditionally, the Commission has only accredited defense capital case continuing education seminars involving in-person courses where participants are required to gather in a centralized location for the requisite hours of classroom-type training (which usually also include smaller breakout sessions). This is the preferred format for capital case training. With the continuation of the pandemic and sponsors of CLE trainings offering hybrid trainings, live in-person and/or live webinars, the Commission extended the authorization for attorneys to complete the required capital case training by live-webinar for calendar year 2022. This is the same accommodation enacted for seminars in 2020 and 2021. While live-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 Commission will resume the requirement that capital case trainings must be completed in a live in-person classroom environment in 2023.

Revocation of Certification

The Rules for Appointment of Counsel in Capital Cases require attorneys certified to accept appointments as counsel in capital cases to complete, every two years, at least twelve hours of training on the defense of capital cases, including at least six hours of training on the appeal of capital cases, if certified as appellate counsel. Failure to comply with the training requirements results in the revocation of the attorney's certification. If an attorney is serving as counsel in a capital case at the time of revocation, the attorney must immediately notify in writing the indigent defendant, the appointing court, and the Supreme Court staff liaison to the Commission. In 2022, the Commission revoked the certification for twenty-seven attorneys who failed to comply with the capital case training requirements pursuant to Appt.Coun.R. 4.

Until an attorney's certification is reinstated, the attorney is not eligible to accept future appointments as counsel for indigent defendants in capital cases.



Best Practices for Counsel in Capital Cases

The Ohio Supreme Court Rules for Appointment of Counsel in Capital Cases provide that the Commission shall “[p]romulgate best practices for the representation of indigent defendants in capital cases and disseminate those best practices appropriately.” Pursuant to that mandate, the Commission developed the *Best Practices for Representation by Trial, Appellate, Postconviction, Habeas, and Clemency Counsel for Indigent Defendants in Capital Cases* (“[Best Practices](#)”) to guide attorneys involved in defending indigent defendants in capital cases at all stages of the proceedings in Ohio. The objective of these Best Practices is to contribute to 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. At the same time, the goal of every practitioner must be to provide representation that exceeds any minimal standard – the client and Ohio’s system of justice demands an attorney’s best efforts. In December 2022, the best practices were circulated to attorneys certified to accept appointments in capital cases, sponsors of death penalty training seminars, the Ohio Judicial College, and Ohio Common Pleas Judges.

2023 Anticipated Projects

In 2023, the Commission will continue to pursue activities consistent with its mission and assess progress on identified goals and objectives. The Commission anticipates working on the following projects:

- Propose final adoption of the amendments to the Rules for the Appointment of Counsel in Capital Cases to clarify that the rule applies to all stages of state capital litigation, including direct appeal and state postconviction petitions, and establish standards for the qualifications of lawyers seeking appointment as lead or co-counsel in postconviction capital cases.
- Work with IT to develop a new application to track attorney certifications and capital cases in accordance with the mandates of the rule.
- Continue to collaborate with sponsors of defense of capital case trainings, including appellate and postconviction trainings.

Proposed Rule Amendments

On Nov. 15, 2022, the Commission presented to the Court proposed amendments to the Rules for the Appointment of Counsel in Capital Cases to clarify that the rule applies to all stages of state capital litigation, including direct appeal and state postconviction petitions. The proposed amendments also establish standards for the qualifications of lawyers seeking appointment as lead or co-counsel in postconviction capital cases. The Court published the proposed amendments for a 60-day public comment period due on or before Jan. 12, 2023. The Commission will request the Court adopt the final rule amendments in 2023.

Capital Case Notification

In 2022, the records reflect the Supreme Court of Ohio received a total of 12 Notices to Supreme Court of Ohio of filing of indictment charging aggravated murder with specification(s) of aggravating circumstances 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.

Conclusion

The Commission will continue to take the steps necessary to certify attorneys to ensure judges are able to appoint quality representation for those charged with or convicted of a capital offense.