

**PROPOSED NEW RULES FOR APPOINTMENT OF COUNSEL
IN CAPITAL CASES AND AMENDMENTS TO THE RULES OF SUPERINTENDENCE
FOR THE COURTS OF OHIO**

Comments Requested: The Supreme Court of Ohio will accept public comments until July 9, 2014, on the following proposed new Rules for Appointment of Counsel in Capital Cases and amendments to the Rules of Superintendence for the Courts of Ohio.

Comments on the proposed new rules and amendments should be submitted in writing to: John VanNorman, Senior Policy & Research Counsel, Supreme Court of Ohio, 65 South Front Street, 7th Floor, Columbus, Ohio 43215-3431, or john.vannorman@sc.ohio.gov not later than July 9, 2014. Please include your full name and mailing address in any comments submitted by e-mail.

Key to proposed new rules and amendments:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

RULES FOR APPOINTMENT OF COUNSEL IN CAPITAL CASES

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SECTION 1. GENERAL RULES.

Appt.Coun.R. 1.01. Title.

These rules shall be known as the “Rules for Appointment of Counsel in Capital Cases.”

Effective Date: _____

Appt.Coun.R. 1.02. Purpose.

The purpose of the Rules for 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.

Effective Date: _____

Appt.Coun.R. 1.03. Authority.

The Rules for Appointment of Counsel in Capital Cases are promulgated pursuant to Article IV, Sections 2(B)(1)(g) and 5(A)(1) of the Ohio Constitution and the inherent authority of the Supreme Court to promote the fair administration of justice in Ohio courts.

Effective Date: _____

Appt.Coun.R. 1.04. Applicability.

The Rules for Appointment of Counsel in Capital Cases shall apply in either of the following cases:

(A) An indigent defendant has been charged with aggravated murder and the indictment includes one or more specifications of aggravating circumstances listed in R.C. 2929.04(A);

(B) A juvenile defendant has been indicted for a capital offense, but because of the defendant’s age the defendant cannot be sentenced to death.

Effective Date: _____

Appt.Coun.R. 1.05. Citation.

The Rules for Appointment of Counsel in Capital Cases shall be cited as “Appt.Coun.R. _____.”

Effective Date: _____

Appt.Coun.R. 1.06. **Definitions.**

As used in the Rules for Appointment of Counsel in Capital Cases:

(A) **High quality representation**

“High quality representation” means representation consistent with the American Bar Association’s *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.*

(B) **Trial**

"Trial" means a case that has concluded with a judgment of acquittal pursuant to Crim.R. 29 or submission to a jury for decision and verdict.

Effective Date:_____

184 **SECTION 2. CREATION AND FUNCTIONS.**

185
186 **Appt.Coun.R. 2.01. Creation.**

187
188 There is hereby created by the Supreme Court the Commission on Appointment of Counsel in
189 Capital Cases.

190
191 Effective Date: _____

192
193
194 **Appt.Coun.R. 2.02. Duties and Authority.**

195
196 **(A) Duties**

197
198 The Commission on Appointment of Counsel in Capital Cases shall do all of the
199 following:

200
201 (1) Prepare and notify attorneys of the procedures for obtaining from the
202 commission certification for appointment as counsel for indigent defendants in
203 capital cases pursuant to Appt.Coun.R. 3.01 through 3.05;

204
205 (2) Maintain a list of attorneys certified for appointment as counsel for
206 indigent defendants in capital cases pursuant to Appt.Coun.R. 3.01 through 3.05
207 and post the list on the website of the Supreme Court;

208
209 (3) Monitor the performance of attorneys appointed as counsel for indigent
210 defendants in capital cases pursuant to Appt.Coun.R. 5.02 and 5.03 and the result
211 and status of those cases;

212
213 (4) Promulgate best practices for the representation of indigent defendants in
214 capital cases and disseminate those best practices appropriately;

215
216 (5) Recommend to the Supreme Court amendments to the Rules for
217 Appointment of Counsel in Capital Cases or any other rule or statute relative to
218 the defense or appeal of capital cases;

219
220 (6) Consider any other issues the commission deems necessary to assist the
221 Supreme Court and its staff regarding the appointment of counsel in capital cases.

222
223 **(B) Authority**

224
225 The commission has no independent policy-setting authority.

226
227 Effective Date: _____

Appt.Coun.R. 2.03. **Membership.**

(A) **Appointments**

The Commission on Appointment of Counsel in Capital Cases consists of the following seven members appointed by the Chief Justice and Justices of the Supreme Court:

(1) Three members, each of whom shall be engaged in the practice of law as a public defender, nominated by the Ohio Public Defender;

(2) One member, who shall be engaged in the practice of law by representing persons charged with criminal offenses, nominated by the President of the Ohio Association of Criminal Defense Lawyers;

(3) One member, who shall be engaged in the practice of law by representing persons charged with criminal offenses, nominated by the President of the Ohio Metropolitan Bar Association Consortium;

(4) One member, who shall be engaged in the practice of law by representing persons charged with criminal offenses, nominated by the President of the Ohio State Bar Association;

(5) One member, who shall be a judge of a court of common pleas with general jurisdiction, nominated by the President of the Ohio Common Pleas Judges Association.

(B) **Qualifications**

Each commission member shall meet all of the following qualifications:

(1) Be admitted to the practice of law in Ohio and registered for active status with the Office of Attorney Services of the Supreme Court pursuant to Gov.Bar R. VI;

(2) If an attorney, currently represent or have previously represented criminal defendants for not less than five years;

(3) If an attorney, be certified for appointment as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 3.01 through 3.05 or be eligible for such certification;

(4) If an attorney, currently not serve as a prosecuting attorney, city director of law, village solicitor, or similar officer; as the assistant or employee of such an officer; or as an employee of any court;

(5) If the judge of a court of common pleas with general jurisdiction nominated by the President of the Ohio Common Pleas Judges Association, has completed Part III of the “Judicial Orientation Program” pursuant to division Gov.Jud.R. IV, Section 10(B)(3);

(6) Possess knowledge of the law and practice of capital cases.

(C) Composition

Commission membership should reflect the gender, racial, ethnic, and geographic diversity of Ohio.

Effective Date: _____

Appt.Coun.R. 2.04. Terms and Vacancies.

(A) Initial terms

Initial terms for members of the Commission on Appointment of Counsel in Capital Cases are as follows:

(1) One of the members who is engaged in the practice of law as a public defender and nominated by the Ohio Public Defender; the member who is engaged in the practice of law by representing persons charged with criminal offenses and nominated by the President of the Ohio Association of Criminal Defense Lawyers; and the judge of a court of common pleas with general jurisdiction nominated by the President of the Ohio Common Pleas Judges Association shall be appointed to a term that ends on December 31, 2015;

(2) One of the members who is engaged in the practice of law as a public defender and nominated by the Ohio Public Defender and the member who is engaged in the practice of law by representing persons charged with criminal offenses and nominated by the President of the Ohio Metropolitan Bar Association Consortium shall be appointed to a term that ends on December 31, 2016;

(3) One of the members who is engaged in the practice of law as a public defender and nominated by the Ohio Public Defender and the member who is engaged in the practice of law by representing persons charged with criminal offenses and nominated by the President of the Ohio State Bar Association shall be appointed to a term that ends on December 31, 2017.

(B) Subsequent terms and reappointment

Except as provided in division (A) of this rule, 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 commission member is eligible for reappointment after serving three consecutive full terms, but only upon at least a one-year break in service.

(C) Change of position, employment, affiliation, or status

Each commission member appointed because of the member's elected position, official position, employment, organizational affiliation, or other status ceases to be a member at such time the member no longer holds that position, employment, affiliation, or status.

(D) Filling of vacancies

Vacancies on the commission shall be filled in the same manner as original appointments. A commission member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed holds office for the remainder of that term.

Effective Date: _____

Appt.Coun.R. 2.05. Chairperson and Vice-Chairperson.

At the first meeting each year of the Commission on Appointment of Counsel in Capital Cases, the commission members shall elect one member as chairperson and one member as vice-chairperson. The term of a chairperson and vice-chairperson is one year. A chairperson and vice-chairperson shall not serve more than six consecutive full terms.

Effective Date: _____

Appt.Coun.R. 2.06. Staff Liaison.

The Administrative Director of the Supreme Court shall assign one or more Supreme Court employees as may be necessary to serve as staff liaison to the Commission on Appointment of Counsel in Capital Cases. The staff liaison assists the commission as necessary in the implementation of its work, but at all times is considered an employee of the Supreme Court.

Effective Date: _____

Appt.Coun.R. 2.07. Meetings.

(A) Manner

The Commission on Appointment of Counsel in Capital Cases may meet in person or by telephone or other electronic means available to the Supreme Court.

367 **(B) Frequency**

368
369 The commission shall meet as often as required to complete its work, provided the
370 commission shall meet a minimum of two times per year. The commission may meet at
371 the call of the chairperson or at the request of a majority of the commission members.
372

373 **(C) Scheduling**

374
375 All commission meetings shall be scheduled for a time and place so as to minimize costs
376 to the Supreme Court and to be accessible to commission members, Supreme Court staff,
377 and the public.
378

379 **(D) Public notice and attendance**

380
381 (1) Public notice of all commission meetings shall be provided on the Supreme
382 Court's website.
383

384 (2) Except in circumstances where the commission is considering the application of
385 an attorney for certification pursuant to Appt.Coun.R. 3.01 through 3.05, all commission
386 meetings shall be open to the public.
387

388 **(E) Member attendance**

389
390 (1) For a fully effective commission, a commission member shall make a good faith
391 effort to attend, in person, each commission meeting.
392

393 (2) A commission member who is unable to attend a meeting due to an unavoidable
394 conflict may request the chairperson allow the member to participate by telephone or
395 other electronic means available to the Supreme Court. A commission member
396 participating in this manner is considered present for meeting attendance, quorum, and
397 voting purposes.
398

399 (3) A commission member may not designate a replacement for participation in or
400 voting at meetings.
401

402 (4) If a commission member misses three consecutive meetings, the chairperson or
403 the Supreme Court staff liaison to the commission may recommend to the Chief Justice
404 and Justices of the Supreme Court that the member relinquish the member's position on
405 the commission.
406

407 **(F) Minutes**

408
409 Minutes shall be kept at every commission meeting and distributed to the commission
410 members for review prior to and approval at the next meeting.
411
412

413 **(G) Quorum**

414
415 A quorum exists when a majority of commission members is present for the meeting,
416 including those members participating by telephonic or other electronic means.

417
418 **(H) Actions**

419
420 At any commission meeting at which a quorum is present, the commission members may
421 take action by affirmative vote of a majority of the members in attendance.

422
423 Effective Date: _____

424
425
426 **Appt.Coun.R. 2.08. Subcommittees.**

427
428 **(A) Creation**

429
430 The Commission on Appointment of Counsel in Capital Cases may form such
431 subcommittees it believes necessary to complete the work of the commission. A
432 subcommittee should consist of select commission members and other persons who the
433 chairperson believes will assist in a full exploration of the issue under the review of the
434 subcommittee.

435
436 **(B) Size**

437
438 A subcommittee should remain relatively small in size and have a ratio of commission
439 members to non-commission members not exceeding one to three.

440
441 **(C) Application of rules**

442
443 Appt.Coun.R. 2.06; 2.07(A), (C), (D)(2), (E)(2) and (3), (G), and (H); 2.09; and 2.11
444 through 2.14 apply to the work and non-commission members of a subcommittee.

445
446 Effective Date: _____

447
448
449 **Appt.Coun.R. 2.09. Code of Ethics.**

450
451 A member of the Commission on Appointment of Counsel in Capital Cases shall comply with
452 the requirements of the Supreme Court's *Code of Ethics for Court Appointees*. The Supreme
453 Court staff liaison for the commission shall provide each commission member with a copy of the
454 code following the member's appointment to the commission and thereafter at the first meeting
455 each year of the commission.

456
457 Effective Date: _____

Appt.Coun.R. 2.10. **Annual Report.**

By March 31st of each year, the chairperson of the Commission on Appointment of Counsel in Capital Cases, with the assistance of the Supreme Court staff liaison for the commission, shall prepare a report for the Chief Justice, Justices, and Administrative Director of the Supreme Court detailing the activities and accomplishments of the commission during the previous calendar year and the anticipated activities of the commission during the upcoming calendar year. The staff liaison shall submit the report to the Administrative Director for distribution to the Chief Justice and Justices and publication on the Supreme Court's website.

Effective Date: _____

Appt.Coun.R. 2.11. **Work Product.**

The work product of the Commission on Appointment of Counsel in Capital Cases is the property of the Supreme Court.

Effective Date: _____

Appt.Coun.R. 2.12. **Budget.**

(A) Source of funding

Funds for the operation of the Commission on Appointment of Counsel in Capital Cases are provided from the Attorney Services Fund pursuant to Gov.Bar R. VI, Section 8(A)(5).

(B) Authority of commission

The budget of the commission is set by the Supreme Court through its internal budget process and as implemented by the Supreme Court Office of Attorney Services. The commission has no authority to set its own budget.

Effective Date: _____

Appt.Coun.R. 2.13. **Compensation.**

A member of the Commission on Appointment of Counsel in Capital Cases serves without compensation.

Effective Date: _____

504 **Appt.Coun.R. 2.14.** **Reimbursement of Expenses.**

505

506 A member of the Commission on Appointment of Counsel in Capital Cases shall be reimbursed
507 for expenses incurred in service to the commission as permitted by the Supreme Court's
508 Guidelines for Travel by Court Appointees.

509

510 Effective Date:_____

511 **SECTION 3. CERTIFICATION OF COUNSEL.**

512
513 **Appt.Coun.R. 3.01. General Certification Requirements.**

514
515 **(A) Requirement**

516
517 Prior to appointment as counsel for an indigent defendant in a capital case pursuant to
518 Appt.Coun.R. 5.02 or 5.03, an attorney shall obtain certification from the Commission on
519 Appointment of Counsel in Capital Cases.

520
521 **(B) Qualifications**

522
523 An applicant for certification under division (A) of this rule shall possess all of the
524 following qualifications:

- 525
526 (1) Admission to the practice of law in Ohio or admission to practice pro hac
527 vice;
528
529 (2) Demonstrated commitment to providing high quality legal representation
530 in the defense of capital cases;
531
532 (3) Substantial knowledge and understanding of the relevant state, federal,
533 and international law, both procedural and substantive, governing capital cases;
534
535 (4) Skill in the management and conduct of complex negotiations and
536 litigation;
537
538 (5) Skill in legal research, analysis, and the drafting of litigation documents;
539
540 (6) Skill in oral advocacy;
541
542 (7) Skill in the use of expert witnesses and familiarity with common areas of
543 forensic investigation, including fingerprints, ballistics, arson, forensic pathology,
544 and DNA evidence;
545
546 (8) Skill in the investigation, preparation, and presentation of evidence
547 bearing upon mental status;
548
549 (9) Skill in the investigation, preparation, and presentation of mitigating
550 evidence;
551
552 (10) Skill in the elements of trial advocacy, such as jury selection, cross-
553 examination of witnesses, and opening and closing statements.

554
555 Effective Date:_____
556

Appt.Coun.R. 3.02.

Certification Requirement for Trial Lead Counsel.

(A) Requirement

Prior to appointment as trial lead counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02, an attorney shall obtain certification from the Commission on Appointment of Counsel in Capital Cases.

(B) Qualifications

An applicant for certification under division (A) of this rule shall meet all of the following qualifications:

- (1) Possess at least five years of criminal litigation experience in Ohio courts of common pleas or criminal appellate experience in Ohio courts of appeals or the Supreme Court;
- (2) Possess either of the following qualifications:
 - (a) Experience as trial lead counsel for the defense in the jury trial of at least one capital case;
 - (b) Experience as trial co-counsel for the defense in the jury trial of at least two capital cases.
- (3) Possess either of the following qualifications:
 - (a) Experience as trial lead counsel in the jury trial of at least one murder or aggravated murder case in the ten years prior to making application;
 - (b) Experience as trial lead counsel in three aggravated or first or second-degree felony jury trials in a court of common pleas in the five years prior to making application.
- (4) Comply with the general certification requirements of Appt.Coun.R. 3.01;
- (5) Comply with the training requirements of Appt.Coun.R. 4.01.

Effective Date: _____

Appt.Coun.R. 3.03. **Certification Requirement for Trial Co-Counsel.**

(A) Requirement

Prior to appointment as trial co-counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02, an attorney shall obtain certification from the Commission on Appointment of Counsel in Capital Cases.

(B) Qualifications

An applicant for certification under division (A) of this rule shall meet all of the following qualifications:

- (1) Possess at least three years of criminal litigation experience in Ohio courts of common pleas or criminal appellate experience in Ohio courts of appeals or the Supreme Court;
- (2) Possess at least one of the following qualifications:
 - (a) Experience as trial co-counsel in one murder or aggravated murder jury trial in the ten years prior to making application;
 - (b) Experience as trial lead counsel in one first or second-degree felony jury trial in the five years prior to making application;
 - (c) Experience as trial lead or co-counsel in at least two felony jury trials in a court of common pleas in the five years prior to making application.
- (3) Comply with the general certification requirements of Appt.Coun.R. 3.01;
- (4) Comply with the training requirements of Appt.Coun.R. 4.01.

Effective Date: _____

Appt.Coun.R. 3.04. **Certification Requirement for Appellate Counsel.**

(A) Requirement

Prior to appointment as appellate counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.03, an attorney shall obtain certification from the Commission on Appointment of Counsel in Capital Cases.

(B) Qualifications

An applicant for certification under division (A) of this rule shall meet all of the following qualifications:

(1) Possess at least three years of criminal litigation experience in Ohio courts of common pleas or criminal appellate experience in Ohio courts of appeals or the Supreme Court;

(2) Have experience as counsel in the appeal of at least three felony convictions in the three years prior to making application;

(3) Comply with the general certification requirements of Appt.Coun.R. 3.01;

(4) Comply with the training requirements of Appt.Coun.R. 4.03.

Effective Date: _____

Appt.Coun.R. 3.05. **Exceptional Circumstances.**

The Commission on Appointment of Counsel in Capital Cases may certify an attorney who does not satisfy the applicable requirements of Appt.Coun.R. 3.01 through 3.04 for appointment as counsel for indigent defendants in capital cases if the attorney can demonstrate to the satisfaction of the commission that competent representation will be provided to the defendant. In so determining, the commission may consider the applicable qualifications set forth in Appt.Coun.R. 3.01 through 3.04 and any other relevant considerations.

Effective Date: _____

SECTION 4. TRAINING OF COUNSEL.

Appt.Coun.R. 4.01. Defense-of-Capital-Cases Training.

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 satisfactorily complete at least twelve hours of training on the defense of capital cases accredited by the Commission on Appointment of Counsel in Capital Cases.

Effective Date: _____

Appt.Coun.R. 4.02. Defense-of-Capital-Cases Training Program Accreditation.

(A) Training program topics

To be accredited by the Commission on Appointment of Counsel in Capital Cases, a training program in the defense of capital cases may include, but need not be limited to, presentations and training in the following areas:

- (1) State, federal, and international law, both procedural and substantive, governing capital cases;
- (2) Pleading and motion practice;
- (3) Pretrial investigation, preparation, and theory development regarding trial and sentencing;
- (4) Jury selection;
- (5) Trial preparation and presentation, including the use of experts;
- (6) Ethical considerations particular to capital defense representation;
- (7) Preservation of the record and of issues for post-conviction review;
- (8) The attorney's relationship with the client and the client's family;
- (9) Post-conviction litigation in state and federal courts;
- (10) The presentation and rebuttal of scientific evidence;
- (11) Developments in mental health fields and other relevant areas of forensic and biological science;

(12) The unique issues relating to the defense of juveniles charged with committing capital offenses;

(13) The best practices for the representation of indigent defendants in capital cases as promulgated by the commission pursuant to Appt.Coun.R. 2.02(A)(4);

(14) Death penalty appellate and post-conviction litigation in state and federal courts.

(B) Audio or video presentations

The commission shall not accredit a training program in the defense of capital cases that is an audio or video presentation of a recorded training program previously accredited by the commission.

(C) Prosecuting attorneys

The commission shall not accredit a training program in defense of capital cases that is offered to full-time prosecuting attorneys.

Effective Date: _____

Appt.Coun.R. 4.03. Appeal-of-Capital-Cases Training.

In the two-year period prior to seeking certification for appointment as appellate counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 3.04 and every two years thereafter, an attorney shall satisfactorily complete at least twelve hours of training accredited by the Commission on Appointment of Counsel in Capital Cases. At least six hours of the training shall be on the appeal of capital cases.

Effective Date: _____

Appt.Coun.R. 4.04. Appeal-of-Cases-Training Program Accreditation.

(A) Training program topics

To be accredited by the Commission on Appointment of Counsel in Capital Cases, a training program in the appeal of capital cases may include, but need not be limited to, presentations and training in the following areas:

(1) An overview of current developments in death penalty law;

(2) Completion, correction, and supplementation of the record on appeal;

- (3) Reviewing the record for unique death penalty issues;
- (4) Motion practice for death penalty appeals;
- (5) Preservation and presentation of constitutional issues;
- (6) Preparing and presenting oral argument;
- (7) Unique aspects of death penalty practice in the courts of appeals, the Supreme Court, and the United States Supreme Court;
- (8) The attorney's relationship with the appellant and the appellant's family;
- (9) Procedure and practice in collateral litigation, extraordinary remedies, state post-conviction litigation, and federal habeas corpus litigation;
- (10) The best practices for representation of indigent defendants in capital cases promulgated by the commission pursuant to Appt.Coun.R. 2.02(A)(4).

(B) Audio or video presentations

The commission shall not accredit a training program in the appeal of capital cases that is an audio or video presentation of a recorded training program previously accredited by the commission.

(C) Prosecuting attorneys

The commission shall not accredit a training program in the appeal of capital cases that is offered to full-time prosecuting attorneys.

Effective Date: _____

Appt.Coun.R. 4.05. Sponsor Application for Accreditation.

(A) Requirement

A sponsor of a training program offered pursuant to Appt.Coun.R. 4.02 or 4.04 shall obtain accreditation of the program from the Commission on Appointment of Counsel in Capital Cases pursuant to the requirements of this rule.

(B) Application

A sponsor seeking accreditation of a training program offered pursuant to Appt.Coun.R. 4.02 or 4.04 shall submit an application for accreditation to the commission at least sixty days before the date of the proposed program. The application shall include the

curriculum for the training program and biographical information of each member of the seminar faculty.

(C) Post-program accreditation

The commission may accredit a training program for which the sponsor has not obtained accreditation pursuant to Appt.Coun.R. 4.02 or 4.04 if each of the following requirements are met:

(1) The training program included instruction in all areas set forth in Appt.Coun.R. 4.02 or 4.04, as applicable;

(2) The sponsor or an attendee submits an application for accreditation after completion of the training program.

(3) If the application for accreditation is submitted by a training program sponsor, it includes the program curriculum and individual faculty biographical information. If the application for accreditation is submitted by a training program attendee, it includes a program curriculum, individual faculty biographical information, a written breakdown of sessions attended and credit hours received if the training program held concurrent sessions, and proof of attendance.

Effective Date: _____

Appt.Coun.R. 4.06. Verification of Attendance and Credit.

The Commission on Appointment of Counsel in Capital Cases shall obtain from the Supreme Court Commission on Continuing Legal Education a list of attendees at each training program accredited by the commission pursuant to Appt.Coun.R. 4.02 or 4.04 that shall be used to verify attendance of and grant credit to each attendee. Credit for purposes of this rule shall be granted to instructors using the same ratio provided in Gov.Bar R. X, Section 5(B).

Effective Date: _____

Appt.Coun.R. 4.07. Noncompliance with Training Requirements.

(A) Revocation of certification

By March 31st of each year, the Commission on Appointment of Counsel in Capital Cases shall review the list of attorneys certified during the prior year for appointment as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 3.01 through 3.04. The commission shall revoke the certification of an attorney who has not complied with the applicable training requirements of Appt.Coun.R. 4.01 and 4.03. Except as

provided in division (B) of this rule, an attorney whose certification has been revoked shall not be eligible to accept future appointments as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 5.02 or 5.03.

(B) Reinstatement of certification

The commission may reinstate the certification of an attorney who has previously been certified for appointment as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 3.01 through 3.04, but whose certification has been revoked pursuant to division (A) of this rule. The attorney shall submit a new application demonstrating that the attorney has complied with the applicable training requirements of Appt.Coun.R. 4.01 and 4.03.

Effective Date: _____

871 **SECTION 5. APPOINTMENT OF COUNSEL.**

872
873 **Appt.Coun.R. 5.01. Verification of Indigency.**

874
875 When appointing attorneys as counsel to represent an indigent defendant in a capital case
876 pursuant to Appt.Coun.R. 5.02 or 5.03 for which the county will apply to the Ohio Public
877 Defender Commission for reimbursement of costs, the court shall require the defendant to
878 complete a financial disclosure form. The court shall follow Ohio Adm.Code 120-1-3 as a
879 guideline to determine indigency and standards of indigency.

880
881 Effective Date:_____
882

883
884 **Appt.Coun.R. 5.02. Appointment of Trial Counsel.**

885
886 **(A) Appointment**

887
888 Except as provided in Appt.Coun.R. 5.04, a court shall appoint at least two attorneys to
889 represent an indigent defendant in either of the following cases:
890

891 (1) The defendant has been charged with aggravated murder and the
892 indictment includes one or more specifications of aggravating circumstances
893 listed in R.C. 2929.04(A);
894

895 (2) The defendant is a juvenile indicted for a capital case, but because of the
896 defendant's age cannot be sentenced to death.
897

898 **(B) Trial lead designation**

899
900 The court shall designate one of the attorneys appointed as counsel pursuant to division
901 (A) of this rule as "trial lead counsel." To be designated as trial lead counsel, the attorney
902 shall have been certified for appointment as such by the Commission on Appointment of
903 Counsel in Capital Cases pursuant to Appt.Coun.R. 3.02.
904

905 **(C) Trial co-counsel designation**

906
907 The court shall designate one of the attorneys appointed as counsel pursuant to division
908 (A) of this rule as "trial co-counsel." To be designated as trial co-counsel, the attorney
909 shall have been certified for appointment as such by the commission pursuant to
910 Appt.Coun.R. 3.03.
911

912 **(D) Office in Ohio and criminal trial experience**

913
914 At least one of the attorneys appointed as counsel pursuant to division (A) of this rule
915 shall maintain a law office in Ohio and have experience in Ohio criminal trial practice.
916

917 Effective Date:_____

Appt.Coun.R. 5.03. **Appointment of Appellate Counsel.**

(A) Appointment

Except as provided in Appt.Coun.R. 5.04, a court shall appoint at least two attorneys to appeal a case where the trial court has imposed the death penalty on an indigent defendant.

(B) Appellate counsel designation

The court shall designate attorneys appointed as counsel pursuant to division (A) of this rule as “appellate counsel.” To be designated as appellate counsel, the attorney shall have been certified for appointment as such by the Commission on Appointment of Counsel in Capital Cases pursuant to Appt.Coun.R. 3.04.

(C) Office in Ohio

At least one of the attorneys appointed as counsel pursuant to division (A) of this rule shall maintain a law office in Ohio.

Effective Date: _____

Appt.Coun.R. 5.04 . **Private Counsel.**

A court shall not appoint a second attorney as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 5.03 when the defendant has engaged one privately-retained attorney.

Effective Date: _____

Appt.Coun.R. 5.05. **Distribution of Appointments.**

A court should distribute its appointments of attorneys as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 5.02 and 5.03 as widely as possible among the attorneys in the jurisdiction of the court and the contiguous jurisdictions who are certified for appointment pursuant to Appt.Coun.R. 3.01 through 3.05.

Effective Date: _____

Appt.Coun.R. 5.06. **Workload of Counsel.**

(A) Consideration by court

In appointing an attorney as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 5.03, the court shall consider the nature and volume of the

workload of the attorney to ensure the attorney, if appointed, can direct sufficient attention to the defense of the case and provide competent representation to the defendant.

(B) Responsibility of attorney

An attorney appointed as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 5.03 shall provide the client with competent representation in accordance with constitutional and professional standards. The attorney shall not accept assignments that, by reason of their excessive size, interfere with the rendering of competent representation or lead to the breach of professional obligations.

Effective Date: _____

Appt.Coun.R. 5.07. Notice of Appointment.

Within two weeks of appointment of an attorney as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 5.03, the court shall notify the Supreme Court staff liaison to the Commission for Appointment of Counsel in Capital Cases. The notice shall be on a form prescribed by the commission and include all of the following:

- (A) The name of the court and the judge assigned to the case;
- (B) The case name and number;
- (C) A copy of the indictment;
- (D) The names, business addresses, telephone numbers, and information as to the certification of all counsel appointed;
- (E) Any other information considered relevant by the commission or court.

Effective Date: _____

Appt.Coun.R. 5.08. Notice of Disposition of Case.

Within two weeks of the disposition of a capital case in which an attorney was appointed as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 5.03, the court shall notify the Supreme Court staff liaison to the commission. The notice shall be on a form prescribed by the commission and include all of the following:

- (A) The outcome of the case;

(B) The title and section of the Revised Code of any crimes to which the defendant pleaded or was found guilty;

(C) The date of dismissal, acquittal, or that sentence was imposed;

(D) The sentence, if any;

(E) A copy of the judgment entry reflecting the information in divisions (B)(1) through (4) of this rule;

(F) If the death penalty was imposed, the names of counsel appointed to represent the defendant on appeal;

(G) Any other information considered relevant by the commission or trial court.

Effective Date: _____

Appt.Coun.R. 5.09. **Notice of Removal.**

If a court removes an attorney appointed as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 5.03, the attorney shall immediately notify in writing the indigent defendant and the Supreme Court staff liaison to the Commission on Appointment of Counsel in Capital Cases.

Effective Date: _____

Appt.Coun.R. 5.10. **Provision of Support Services.**

(A) Requirement

As required by the federal and state constitutions and statutes and professional standards, a court shall provide attorneys appointed as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 5.02 and 5.03 with an investigator, mitigation specialists, mental health professional, and other forensic experts and support services reasonably necessary or appropriate for the attorneys to prepare for and present an adequate defense at every stage of the proceedings. This shall include, but is not limited to, determinations relevant to competency to stand trial, a not guilty by reason of insanity plea, cross-examination of expert witnesses called by the prosecution, disposition following conviction, and preparation for and presentation of mitigating evidence in the sentencing phase of the trial.

(B) Responsibilities of counsel

The attorney designated as trial lead counsel pursuant to Appt.Coun.R. 3.02 shall bear overall responsibility for the performance of the defense team and shall allocate, direct,

and supervise the work of the defense team in accordance with the Rules for Appointment of Counsel in Capital Cases and professional standards. In addition, all counsel bear a responsibility to comply with the Rules for Appointment of Counsel in Capital Cases and professional standards.

Effective Date: _____

Appt.Coun.R. 5.11. **Maintenance of Certification During Appointment.**

(A) Responsibilities of counsel

An attorney appointed as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 5.03 shall maintain certification from the Commission on Appointment of Counsel in Capital Cases as required pursuant to Appt.Coun.R. 3.01 through 3.04, as applicable, throughout the appointment. If the certification lapses during the appointment, the attorney shall immediately notify in writing the indigent defendant, the appointing court, and the Supreme Court staff liaison to the commission.

(B) Reinstatement of certification

The commission may reinstate the certification of an attorney who was previously appointed as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 5.03, but whose certification lapsed during the appointment. The attorney shall submit a new application demonstrating that the attorney has complied with all applicable requirements and providing an explanation for the attorney's lapse of certification that is satisfactory to the commission.

Effective Date: _____

SECTION 6. MONITORING OF COUNSEL.

Appt.Coun.R. 6.01. Duty of Court.

A court that has appointed an attorney as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 5.03 shall monitor the performance of the attorney to ensure the defendant is receiving high quality representation. The court, in addition to any other action it may take, shall report to the Commission on Appointment of Counsel in Capital Cases an attorney who has not provided high quality representation.

Effective Date: _____

Appt.Coun.R. 6.02. Investigation of Complaint.

(A) Duty to investigate

Upon receipt of a complaint from a court that an attorney has not provided high quality representation, the Commission on Appointment of Counsel in Capital Cases shall investigate the complaint, provided the commission shall not begin an investigation while the attorney is still appointed in the matter.

(B) Appointment of investigator

The commission chairperson shall appoint a commission member or an attorney certified for appointment as trial lead counsel pursuant to Appt.Coun.R. 3.02 to investigate complaints.

(C) Notice of investigation

As part of the investigation of a complaint, the attorney shall be notified and given an opportunity to respond to the factual allegations.

Effective Date: _____

Appt.Coun.R. 6.03. Decision on Complaint.

(A) Decision

After an investigation of an attorney conducted pursuant to Appt.Coun.R. 6.02 and an opportunity for the attorney to respond to the factual allegations, the members of the Commission on Appointment of Counsel in Capital Cases, excluding the commission investigator and chairperson, shall meet and vote to determine whether a violation of the Rules for Appointment of Counsel in Capital Cases has occurred and whether the violation requires removal of the attorney from the list of attorneys certified for

1133 appointment as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R.
1134 3.01 through 3.05. If there is no apparent merit to the allegation, the complainant shall be
1135 advised and the matter shall be closed.

1136
1137 **(B) Notice of decision**
1138

1139 Before taking action making an attorney ineligible to receive additional appointments as
1140 counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 3.01 through
1141 3.05, the commission shall provide the attorney written notice that such action is being
1142 contemplated and give the attorney an opportunity to respond.

1143
1144 **(C) Appeal of decision**
1145

1146 If an attorney is deemed ineligible to remain on the list of attorneys certified for
1147 appointment as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R.
1148 3.01 through 3.05, the attorney may appeal the decision of the commission to the
1149 commission chairperson. Upon appeal, the chairperson shall review all applicable
1150 allegations, findings, and responses; determine whether a violation has occurred and
1151 whether appropriate action was taken; and issue a decision. The decision of the
1152 chairperson is final.

1153
1154 Effective Date: _____
1155

1156
1157 **Appt.Coun.R. 6.04. Restoration of Certification.**
1158

1159 Only in exceptional circumstances shall the Commission on Appointment of Counsel in Capital
1160 Cases restore an attorney whose certification has been revoked pursuant to Appt.Coun.R. 5.03 to
1161 the list of attorneys certified for appointment as counsel for indigent defendants in capital cases
1162 pursuant to Appt.Coun.R. 3.01 through 3.05.

1163
1164 Effective Date: _____
1165

1166
1167 **Appt.Coun.R. 6.05. Attorney Grievance Process.**
1168

1169 The findings made by the Commission on Appointment of Counsel in Capital Cases in an
1170 investigation of an attorney conducted pursuant to Appt.Coun.R. 6.02 are not related to or part of
1171 the grievance process governing attorneys in Ohio. The findings made by the commission shall
1172 be only for the purpose of determining continued eligibility for appointment as counsel for
1173 indigent defendants in capital cases pursuant to Appt.Coun.R. 5.02 and 5.03.

1174
1175 Effective Date: _____

1176 **RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO**

1177
1178 **RULE 20. ~~Appointment of Counsel for Indigent Defendants in Capital Cases.~~**
1179 **RESERVED**

1180
1181 **~~I. Scope of rules~~**

1182
1183 ~~(A) Rules 20 through 20.05 of the Rules of Superintendence for the Courts of Ohio~~
1184 ~~shall apply in cases where an indigent defendant has been charged with aggravated~~
1185 ~~murder and the indictment includes one or more specifications of aggravating~~
1186 ~~circumstances listed in division (A) of section 2929.04 of the Revised Code. These rules~~
1187 ~~shall apply in cases where a juvenile defendant is indicted for a capital offense, but~~
1188 ~~because of the juvenile's age, cannot be sentenced to death.~~

1189
1190 ~~(B) The provisions for the appointment of counsel set forth in Sup. R. 20 through~~
1191 ~~20.05 apply only in cases where the defendant is indigent and counsel is not privately~~
1192 ~~retained by or for the defendant.~~

1193
1194 ~~(C) If the defendant is entitled to the appointment of counsel, the court shall appoint~~
1195 ~~two attorneys certified pursuant to Sup. R. 20 through 20.05. If the defendant engages~~
1196 ~~one privately retained attorney, the court shall not appoint a second attorney pursuant to~~
1197 ~~this rule.~~

1198
1199 ~~(D) The provisions of Sup. R. 20 through 20.05 apply in addition to the reporting~~
1200 ~~requirements created by section 2929.021 of the Revised Code.~~

1201
1202 **~~II. Appointment of counsel for indigent defendants in capital cases~~**

1203
1204 **~~(A) Trial counsel~~**

1205
1206 ~~At least two attorneys shall be appointed by the court to represent an indigent~~
1207 ~~defendant charged with aggravated murder and the indictment includes one or~~
1208 ~~more specifications of aggravating circumstances listed in R.C. 2929.04(A). At~~
1209 ~~least one of the appointed counsel shall maintain a law office in Ohio and have~~
1210 ~~experience in Ohio criminal trial practice. The counsel appointed shall be~~
1211 ~~designated "lead counsel" and "co-counsel" and must meet the qualifications set~~
1212 ~~forth in Sup. R. 20.01.~~

1213
1214 **~~(B) Appellate counsel~~**

1215
1216 ~~At least two attorneys shall be appointed by the court to appeal cases where the~~
1217 ~~trial court has imposed the death penalty on an indigent defendant. At least one of~~
1218 ~~the appointed counsel shall maintain a law office in Ohio. Appointed counsel~~
1219 ~~shall meet the qualifications for appellate counsel set forth in Sup. R. 20.01.~~

~~(C) Exceptional circumstances~~

~~If an attorney does not satisfy the requirements of divisions (A) or (B) of this section, the attorney may be certified as lead counsel, co counsel, or appellate counsel if it can be demonstrated to the satisfaction of the Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases that competent representation will be provided to the defendant. In so determining, the committee may consider all of the factors in Sup. R. 20.01 and any other relevant considerations.~~

III. Procedures for court appointments of counsel

~~(A) Appointing counsel~~

~~Only counsel who have been certified by the committee shall be appointed to represent indigent defendants charged with aggravated murder and the indictment includes one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code. Each court may adopt local rules establishing qualifications in addition to and not in conflict with those established by Sup. R. 20.01. Appointments of counsel for these cases should be distributed as widely as possible among the certified attorneys in the jurisdiction of the appointing court.~~

~~(B) Workload of appointed counsel~~

~~(1) In appointing counsel, the court shall consider the nature and volume of the workload of the prospective counsel to ensure that counsel, if appointed, could direct sufficient attention to the defense of the case and provide competent representation to the defendant.~~

~~(2) Attorneys accepting appointments shall provide each client with competent representation in accordance with constitutional and professional standards. Appointed counsel shall not accept workloads that, by reason of their excessive size, interfere with the rendering of competent representation or lead to the breach of professional obligations.~~

~~(C) Notice to the committee~~

~~(1) Within two weeks of appointment, the appointing court shall notify the committee secretary of the appointment on a form prescribed by the committee. The notice shall include all of the following:~~

- ~~(a) The court and the judge assigned to the case;~~
- ~~(b) The case name and number;~~

(e) A copy of the indictment;

(d) The names, business addresses, telephone numbers, and certification of all attorneys appointed;

(e) Any other information considered relevant by the committee or appointing court.

(2) Within two weeks of disposition, the trial court shall notify the committee secretary of the disposition of the case on a form prescribed by the committee. The notice shall include all of the following:

(a) The outcome of the case;

(b) The title and section of the Revised Code of any crimes to which the defendant pleaded or was found guilty;

(c) The date of dismissal, acquittal, or that sentence was imposed;

(d) The sentence, if any;

(e) A copy of the judgment entry reflecting the above;

(f) If the death penalty was imposed, the name of counsel appointed to represent the defendant on appeal;

(g) Any other information considered relevant by the Committee or trial court.

(D) Support services

The appointing court shall provide appointed counsel, as required by Ohio law or the federal Constitution, federal statutes, and professional standards, with the investigator, mitigation specialists, mental health professional, and other forensic experts and other support services reasonably necessary or appropriate for counsel to prepare for and present an adequate defense at every stage of the proceedings including, but not limited to, determinations relevant to competency to stand trial, a not guilty by reason of insanity plea, cross examination of expert witnesses called by the prosecution, disposition following conviction, and preparation for and presentation of mitigating evidence in the sentencing phase of the trial. Lead counsel bears overall responsibility for the performance of the defense team and shall allocate, direct, and supervise the work in accordance with Sup. R. 20 through 20.04 and professional standards. In addition, all counsel bear a responsibility to comply with Sup. R. 20 through 20.04 and professional standards.

RULE 20.01. Qualifications Required for Appointment as Counsel for Indigent Defendants in Capital Cases.

(A) Generally

Every attorney representing a capital defendant shall have all of the following:

- (1) Demonstrated commitment to providing high quality legal representation in the defense of capital cases;
- (2) Substantial knowledge and understanding of the relevant state, federal, and international law, both procedural and substantive, governing capital cases;
- (3) Skill in the management and conduct of complex negotiations and litigation;
- (4) Skill in legal research, analysis, and the drafting of litigation documents;
- (5) Skill in oral advocacy;
- (6) Skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, arson, forensic pathology, and DNA evidence;
- (7) Skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
- (8) Skill in the investigation, preparation, and presentation of mitigating evidence;
- (9) Skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements.

(B) Lead counsel

Lead counsel shall satisfy all of the following:

- (1) Be admitted to the practice of law in Ohio or admitted to practice *pro hac vice*;
- (2) Have at least five years of civil or criminal litigation or appellate experience;
- (3) Have specialized training, as approved by the committee, on subjects that will assist counsel in the defense of persons accused of capital crimes in the two-year period prior to making application;

- 1359
1360 (4) ~~Have at least one of the following qualifications:~~
1361
1362 (a) ~~Experience as “lead counsel” for the defense in the jury trial of at~~
1363 ~~least one capital case;~~
1364
1365 (b) ~~Experience as “co-counsel” for the defense in the jury trial of at~~
1366 ~~least two capital cases.~~
1367
1368 (5) ~~Have at least one of the following qualifications:~~
1369
1370 (a) ~~Experience as “lead counsel” in the jury trial of at least one murder~~
1371 ~~or aggravated murder case;~~
1372
1373 (b) ~~Experience as “lead counsel” in ten or more criminal or civil jury~~
1374 ~~trials, at least three of which were felony jury trials;~~
1375
1376 (c) ~~Experience as “lead counsel” in three murder or aggravated murder~~
1377 ~~jury trials; one murder or aggravated murder jury trial and three felony~~
1378 ~~jury trials; or three aggravated or first or second degree felony jury trials~~
1379 ~~in a court of common pleas in the three years prior to making application.~~
1380

1381 **(C) Co-counsel**
1382

1383 ~~Co-counsel shall satisfy all of the following:~~
1384

- 1385 (1) ~~Be admitted to the practice of law in Ohio or admitted to practice *pro hac*~~
1386 ~~*vice*;~~
1387
1388 (2) ~~Have at least three years of civil or criminal litigation or appellate~~
1389 ~~experience;~~
1390
1391 (3) ~~Have specialized training, as approved by the committee, on subjects that~~
1392 ~~will assist counsel in the defense of persons accused of capital crimes in the two~~
1393 ~~years prior to making application;~~
1394
1395 (4) ~~Have at least one of the following qualifications:~~
1396
1397 (a) ~~Experience as “co-counsel” in one murder or aggravated murder~~
1398 ~~jury trial;~~
1399
1400 (b) ~~Experience as “lead counsel” in one first degree felony jury trial;~~
1401
1402 (c) ~~Experience as “lead” or “co-counsel” in at least two felony jury or~~
1403 ~~civil jury trials in a court of common pleas in the three years prior to~~
1404 ~~making application.~~

~~(D) Appellate counsel~~

~~Appellate counsel shall satisfy all of the following qualifications:~~

- ~~(1) Be admitted to the practice of law in Ohio or admitted to practice *pro hac vice*;~~
- ~~(2) Have at least three years of civil or criminal litigation or appellate experience in Ohio;~~
- ~~(3) Have specialized training, as approved by the committee, on subjects that will assist counsel in the appeal of cases in which the death penalty was imposed in the two years prior to making application;~~
- ~~(4) Have experience as counsel in the appeal of at least three felony convictions in the three years prior to making application.~~

~~(E) Definition~~

~~As used in this rule, "trial" means a case concluded with a judgment of acquittal under Rule 29 of the Ohio Rules of Criminal Procedure or submission to the trial court or jury for decision and verdict.~~

~~RULE 20.02 Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases.~~

~~(A) Committee creation~~

~~There shall be a Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases.~~

~~(B) Appointment of committee members~~

~~The committee shall be composed of five attorneys. Three members shall be appointed by a majority vote of all members of the Supreme Court of Ohio; one shall be appointed by the Ohio State Bar Association; and one shall be appointed by the Ohio Public Defender Commission.~~

~~(C) Eligibility for appointment to the committee~~

~~Each member of the committee shall satisfy all of the following qualifications:~~

- ~~(1) Be admitted to the practice of law in Ohio;~~
- ~~(2) Have represented criminal defendants for not less than five years;~~

(3) ~~Demonstrate a knowledge of the law and practice of capital cases;~~

(4) ~~Currently not serving as a prosecuting attorney, city director of law, village solicitor, or similar officer or their assistant or employee, or an employee of any court.~~

(D) Overall composition

The overall composition of the committee shall meet both of the following criteria:

(1) ~~No more than two members shall reside in the same county;~~

(2) ~~No more than one shall be a judge.~~

(E) Terms; vacancies

~~The term of office for each member shall be five years, each term beginning on the first day of January. Members shall be eligible for reappointment. Vacancies shall be filled in the same manner as original appointments. Any member appointed to fill a vacancy occurring prior to the expiration of a term shall hold office for the remainder of the term.~~

(F) Election of chairperson

~~The committee shall elect a chairperson and such other officers as are necessary. The officers shall serve for two years and may be reelected to additional terms.~~

(G) Powers and duties of the committee

The committee shall do all of the following:

(1) ~~Prepare and notify attorneys of procedures for applying for certification to be appointed counsel for indigent defendants in capital cases;~~

(2) ~~Certify attorneys as qualified to be appointed to represent defendants in capital cases;~~

(3) ~~Periodically provide all common pleas and appellate court judges and the Ohio Public Defender with a list of all attorneys who are certified to be appointed counsel for indigent capital defendants;~~

(4) ~~Periodically review the list of certified counsel, all court appointments given to attorneys in capital cases, and the result and status of those cases;~~

(5) ~~Develop criteria and procedures for retention of certification including, but not limited to, mandatory continuing legal education on the defense and appeal of capital cases;~~

1497 ~~(6) Monitor the performance of attorneys providing representation in capital~~
1498 ~~proceedings;~~

1499
1500 ~~(7) Investigate and maintain records concerning complaints about the~~
1501 ~~performance of attorneys providing representation in capital cases and take~~
1502 ~~appropriate corrective action pursuant to Rule 20.03 of the Rules of~~
1503 ~~Superintendence;~~

1504
1505 ~~(8) Expand, reduce, or otherwise modify the list of certified attorneys as~~
1506 ~~appropriate and necessary;~~

1507
1508 ~~(9) Review and approve specialized training programs on subjects that will~~
1509 ~~assist counsel in the defense and appeal of capital cases;~~

1510
1511 ~~(10) Recommend to the Supreme Court of Ohio amendments to this rule or any~~
1512 ~~other rule or statute relative to the defense or appeal of capital cases;~~

1513
1514 ~~(11) Adopt best practices for representation of indigent defendants in capital~~
1515 ~~cases and disseminate those best practices appropriately.~~

1516
1517 **(H) Meetings**

1518
1519 ~~The committee shall meet at the call of the chairperson, at the request of a majority of the~~
1520 ~~members, or at the request of the Supreme Court of Ohio. A quorum consists of three~~
1521 ~~members. A majority of the committee is necessary for the committee to elect a~~
1522 ~~chairperson and take any other action.~~

1523
1524 **(I) Compensation**

1525
1526 ~~All members of the committee shall receive equal compensation in an amount to be~~
1527 ~~established by the Supreme Court of Ohio.~~

1528
1529
1530 **~~RULE 20.03. Monitoring of Counsel; Removal.~~**

1531
1532 **(A) Duty of court**

1533
1534 ~~The appointing court shall monitor the performance of all defense counsel to ensure that~~
1535 ~~the client is receiving representation that is consistent with the American Bar~~
1536 ~~Association's "Guidelines for the Appointment and Performance of Defense Counsel in~~
1537 ~~Death Penalty Cases" and referred to herein as "high quality representation." The court,~~
1538 ~~in addition to any other action it may take, shall report an attorney to the Committee on~~
1539 ~~the Appointment of Counsel for Indigent Defendants in Capital Cases who has not~~
1540 ~~provided high quality representation. Where there is a complaint from a judge that an~~
1541 ~~attorney has not provided high quality representation, the committee shall investigate the~~

complaint. The committee will not start an investigation while counsel is still appointed in the matter.

(B) Investigation of complaint

The chairperson shall appoint a member of the committee or appoint an attorney qualified as lead counsel under this rule, who will investigate complaints made by a judge that defense counsel appointed pursuant to this rule failed to provide high quality representation under this rule.

(1) As part of the investigation of a complaint from a judge, the attorney shall be notified and given an opportunity to respond.

(2) After an investigation and after the attorney has been given an opportunity to respond to the factual allegations, the members of the committee, excluding the investigator and chairperson, will meet and vote whether a violation of rules 20 through 20.05 has occurred and whether the violation requires removal from the list of qualified attorneys.

Before taking action making an attorney ineligible to receive additional appointments, the committee shall provide written notice that such action is being contemplated, and give the attorney an opportunity to respond. If there is no apparent merit to the allegation the complainant will be advised and the matter will be closed.

(3) If an attorney is deemed ineligible to remain on the list of attorneys qualified to accept appointments, the attorney may appeal the decision of the committee to the chairperson. Upon appeal, the chairperson will review all applicable allegations, findings, and responses and determine whether a violation has occurred and whether appropriate action was taken and issue a decision. The decision of the chairperson is final.

(C) Revocation

An attorney whose certification has been revoked pursuant to this rule shall be restored to the roster only in exceptional circumstances. The findings made by the committee are not related to or part of the grievance process governing all attorneys in Ohio and the findings made by the committee are only for the purpose of determining continued eligibility for appointment.

RULE 20.04. Programs for Specialized Training.

(A) Programs for specialized training in the defense of persons charged with a capital offense

(1) ~~Attorneys seeking to qualify to receive appointments shall be required to satisfactorily complete a comprehensive training program, approved by the Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases, in the defense of capital cases. To be approved a program should include, but not be limited to, presentations and training in the following areas:~~

- ~~(a) Relevant state, federal, and international law;~~
- ~~(b) Pleading and motion practice;~~
- ~~(c) Pretrial investigation, preparation, and theory development regarding trial and sentencing;~~
- ~~(d) Jury selection;~~
- ~~(e) Trial preparation and presentation, including the use of experts;~~
- ~~(f) Ethical considerations particular to capital defense representation;~~
- ~~(g) Preservation of the record and of issues for post-conviction review;~~
- ~~(h) Counsel's relationship with the client and his family;~~
- ~~(i) Post-conviction litigation in state and federal courts;~~
- ~~(j) The presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science;~~
- ~~(k) The unique issues relating to the defense of those charged with committing capital offenses when under the age of eighteen;~~
- ~~(l) The best practices for representing an indigent capital defendant adopted by the committee pursuant to division (G)(11) of Rule 20.02 of the Rules of Superintendence for the Courts of Ohio;~~
- ~~(m) Death penalty appellate and post-conviction litigation in state and federal courts.~~

(B) ~~Programs for specialized training in the appeal of cases in which the death penalty has been imposed~~

(1) ~~To be approved by the committee, a death penalty appeals seminar shall include instruction devoted to the appeal of a case in which the death penalty has been imposed.~~

(2) ~~The curriculum for an approved death penalty appeal seminar should include, but is not limited to, specialized training in the following areas:~~

- (a) ~~An overview of current developments in death penalty law;~~
- (b) ~~Completion, correction, and supplementation of the record on appeal;~~
- (c) ~~Reviewing the record for unique death penalty issues;~~
- (d) ~~Motion practice for death penalty appeals;~~
- (e) ~~Preservation and presentation of constitutional issues;~~
- (f) ~~Preparing and presenting oral argument;~~
- (g) ~~Unique aspects of death penalty practice in the courts of appeals, the Supreme Court of Ohio, and the United States Supreme Court;~~
- (h) ~~The relationship of counsel with the appellant and the appellant's family during the course of the appeals;~~
- (i) ~~Procedure and practice in collateral litigation, extraordinary remedies, state post-conviction litigation, and federal habeas corpus litigation;~~
- (j) ~~The best practices for representing an indigent capital defendant adopted by the committee pursuant to Sup. R. 20:02(G)(11).~~

(C) Application for training approval

~~The sponsor of a program for specialized training under division (A) or (B) of this rule shall apply for approval from the committee at least sixty days before the date of the proposed seminar. An application for approval shall include the curriculum for the seminar and include biographical information of each member of the seminar faculty.~~

(D) Verification of attendance

~~The committee shall obtain a list of attendees from the Supreme Court Commission on Continuing Legal Education that shall be used to verify attendance and grant credit for each committee approved seminar. Credit for purposes of this rule shall be granted to instructors using the same ratio provided in Rule X of the Supreme Court Rules for the Government of the Bar of Ohio.~~

(E) Accreditation of other programs

~~The committee may accredit programs other than those approved pursuant to divisions (A) and (B) of this rule. To receive accreditation, the program shall include instructions in all areas set forth in divisions (A) and (B) of this rule. Application for accreditation of an in-state program may be made by the program sponsor or a program attendee and shall be made prior to the program. Application for accreditation of an out-of-state program~~

may be submitted by the program sponsor or a program attendee and may be made prior to or after completion of the program. The request for credit from a program sponsor shall include the program curriculum and individual faculty biographical information. The request for credit from a program attendee shall include all of the following:

- (1) Program curriculum;
- (2) Individual faculty biographical information;
- (3) A written breakdown of sessions attended and credit hours received if the seminar held concurrent sessions;
- (4) Proof of attendance.

(F) Specialized Training for Sup. R. 20 certification

(1) ~~To be certified as lead or co-counsel or to retain certification, an attorney shall complete at least twelve hours of committee approved specialized training every two years. To maintain certification as lead counsel or co-counsel, the twelve hours shall be devoted to instruction in the trial of capital cases.~~

(2) ~~To be certified as appellate counsel or to retain certification as appellate counsel, an attorney shall complete at least twelve hours of committee approved training every two years. At least six of the twelve hours shall be devoted to instruction in the appeal of capital cases.~~

(3) ~~On or before the last day of December, each certified counsel shall complete the applicable specialized training requirements of divisions (A) and (B) of this rule. The committee shall review the list of certified counsel for the prior two years and revoke the certification of any attorney who has not complied with the specialized training requirements of this rule. An attorney whose certification has been revoked shall not be eligible to accept future appointment as counsel for an indigent defendant charged with or convicted of an offense for which the death penalty can be or has been imposed.~~

(4) ~~The committee may accredit an out of state program that provides specialized instruction devoted to the investigation, preparation, and presentation of a death penalty trial or specialized instruction devoted to the appeal of a case in which the defendant received the death penalty, or both. Requests for credit for an out of state program may be submitted by the seminar sponsor or a seminar attendee. The request for credit from a program sponsor shall include the program curriculum and individual faculty biographical information. The request for credit from a program attendee shall include all of the following:~~

- (a) Program curriculum;
- (b) Individual faculty biographical information;

(c) ~~A written breakdown of sessions attended and credit hours received if the seminar held concurrent sessions;~~

(d) ~~Proof of attendance.~~

(5) ~~An attorney who has previously been certified but whose certification has been revoked for failure to comply with the specialized training requirements of this rule must, in order to regain certification, submit a new application that demonstrates that the attorney has completed twelve hours of committee approved specialized training in the two year period prior to making application for recertification.~~

RULE 20.05. Effective dates

(A) ~~The effective date of this rule shall be October 1, 1987.~~

(B) ~~The amendments to Section II(A)(5)(b), Section III(B)(2), and to the Subcommittee Comments following Section II of this Rule adopted by the Supreme Court of Ohio on June 28, 1989, shall be effective on July 1, 1989.~~

(C) ~~The amendments to Sections I(A)(2), I(A)(3), I(B), and II, and the addition of Sections I(C) and IV, adopted by the Supreme Court of Ohio on December 11, 1990, shall be effective on January 1, 1991.~~

(D) ~~The amendments to this rule adopted by the Supreme Court of Ohio on April 19, 1995, shall take effect on July 1, 1995.~~

(E) ~~The amendment to Sup. R. 20 adopted by the Supreme Court on December 4, 2002, shall take effect on January 6, 2003.~~

(F) ~~The amendment to Sup. R. 20 adopted by the Supreme Court on February 1, 2005, shall take effect on March 7, 2005.~~

(G) ~~On January 12, 2010, former Rule 20 and Rule 21 of the Rules of Superintendence for the Courts of Ohio was repealed by the Supreme Court and Rules 20 through 20.05 were adopted. Rules 20 through 20.05 are effective March 1, 2010.~~

Commentary (July 1, 1997)

~~This rule is identical to former C.P. Sup. R. 65.~~

RULE 22. Verification of Indigency.

~~Where required by law to appoint counsel to represent indigent defendants in cases for which the county will apply to the Ohio Public Defender Commission for reimbursement of~~

costs, the court shall require the applicant to complete the financial disclosure form. The court shall follow rules promulgated by the Commission pursuant to division (B)(1) of section 120.03 of the Revised Code as guidelines to determine indigency and standards of indigency.

~~Commentary (July 1, 1997)~~

~~This is a new rule added in the 1997 amendments to the Rules of Superintendence. The rule is intended to facilitate compliance with the statutes and administrative rules relative to the appointment of counsel for indigent defendants in criminal cases.~~