

# **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: February 1, 2015

### **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: February 1, 2015

### **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: February 1, 2015

### **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) An indigent juvenile 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), even though the defendant is under eighteen years of age and cannot be sentenced to death.

Effective Date: February 1, 2015

**Appt.Coun.R. 1.05.                      Citation.**

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

Effective Date: February 1, 2015

**Appt.Coun.R. 1.06.                      Definition.**

As used in Appt.Coun.R. 3.01 through 3.05, “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: February 1, 2015

## **SECTION 2. CREATION AND FUNCTIONS.**

### **Appt.Coun.R. 2.01. Creation.**

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

Effective Date: February 1, 2015

### **Appt.Coun.R. 2.02. Duties and Authority.**

#### **(A) Duties**

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

- (1) Prepare and notify attorneys of the procedures for obtaining from the commission certification for appointment as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 3.01 through 3.05;
- (2) Maintain a list of attorneys certified for appointment as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 3.01 through 3.05 and post the list on the website of the Supreme Court;
- (3) Monitor the performance of attorneys appointed as counsel for indigent defendants in capital cases pursuant to Appt.Coun.R. 5.02 and 5.03 and the result and status of those cases;
- (4) Promulgate best practices for the representation of indigent defendants in capital cases and disseminate those best practices appropriately;
- (5) Recommend to the Supreme Court amendments to the Rules for Appointment of Counsel in Capital Cases or any other rule or statute relative to the defense or appeal of capital cases;
- (6) Consider any other issues the commission deems necessary to assist the Supreme Court and its staff regarding the appointment of counsel in capital cases.

#### **(B) Authority**

The commission has no independent policy-setting authority.

Effective Date: February 1, 2015

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

**(A)      Appointments**

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

- (1)      One member, who 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: February 1, 2015

**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) The member who is the judge of a court of common pleas with general jurisdiction and nominated by the President of the Ohio Common Pleas Judges Association shall be appointed to a term that ends on December 31, 2017;

(2) The member who is engaged in the practice of law as a public defender and nominated by the Ohio Public Defender shall be appointed to a term that ends on December 31, 2018;

(3) 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, 2019;

(4) 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, 2020;

(5) 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 shall be appointed to a term that ends on December 31, 2021.

**(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: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

**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.

**(B) Frequency**

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

**(C) Scheduling**

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

**(D) Public notice and attendance**

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

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

**(E) Member attendance**

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

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

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

(4) The staff liaison to the commission shall notify the Chief Justice and the Administrative Director of the Supreme Court if a commission member misses three meetings of the commission within a twelve-month period. Upon such notice, the Administrative Director shall inform the Justices of the Supreme Court in order that the Justices may consider the replacement of the member.

**(F) Minutes**

Minutes shall be kept at every commission meeting and distributed to the commission members for review prior to and approval at the next meeting.

**(G) Quorum**

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

**(H) Actions**

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

Effective Date: February 1, 2015

Amended Effective: October 15, 2024

**Appt.Coun.R. 2.08. Subcommittees.**

**(A) Creation**

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

**(B) Size**

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

**(C) Application of rules**

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

Effective Date: February 1, 2015

**Appt.Coun.R. 2.09. Code of Ethics.**

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

Effective Date: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

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

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

Effective Date: February 1, 2015

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

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

Effective Date: February 1, 2015

### **SECTION 3. CERTIFICATION OF COUNSEL.**

#### **Appt.Coun.R. 3.01. General Certification Requirements.**

##### **(A) Requirement**

Prior to appointment as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R. 5.02 or 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 possess all of the following qualifications:

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

Effective Date: February 1, 2015

**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 in the trial of at least one capital case;
  - (b)     Experience as trial co-counsel in the 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: February 1, 2015

**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 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: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

## **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: February 1, 2015

### **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: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

## **SECTION 5. APPOINTMENT OF COUNSEL.**

### **Appt.Coun.R. 5.01. Verification of Indigency.**

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

Effective Date: February 1, 2015

### **Appt.Coun.R. 5.02. Appointment of Trial Counsel.**

#### **(A) Appointment**

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

- (1) The 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);
- (2) The defendant is an indigent juvenile, has been charged with aggravated murder, and the indictment includes one or more specifications or aggravating circumstances listed in R.C. 2929.04(A), even though the defendant is under eighteen years of age cannot be sentenced to death.

#### **(B) Trial lead designation**

The court shall designate one of the attorneys appointed as counsel pursuant to division (A) of this rule as "trial lead counsel." To be designated as trial lead 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. 3.02.

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

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

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

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

Effective Date: February 1, 2015

**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: February 1, 2015

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

When a defendant has retained counsel in a capital case, the court shall inquire into the defendant’s ability to hire co-counsel and shall determine if the defendant is now indigent. If the defendant is found to be indigent, the court shall appoint co-counsel for the defendant upon the defendant’s request.

Effective Date: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

**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 on 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: February 1, 2015

**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 (A) through (D) 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: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

**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: February 1, 2015

## **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. In determining “high quality representation,” the court may consider the American Bar Association’s *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. 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: February 1, 2015

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

#### **(A) Duty to investigate**

Upon receipt of a complaint from a court, upon the Commission on Appointment of Counsel in Capital Cases’ own knowledge, or at the suggestion from an attorney that an attorney has not provided high quality representation as determined by the court pursuant to Appt.Coun.R. 6.01, the commission 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: February 1, 2015

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

**(B) Notice of decision**

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

**(C) Appeal of decision**

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

Effective Date: February 1, 2015

**Appt.Coun.R. 6.04. Restoration of Certification.**

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

Effective Date: February 1, 2015

**Appt.Coun.R. 6.05. Attorney Grievance Process.**

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

Effective Date: February 1, 2015