



2023

Commission on
Appointment
of Counsel in
Capital Cases
Annual Report

March 2024





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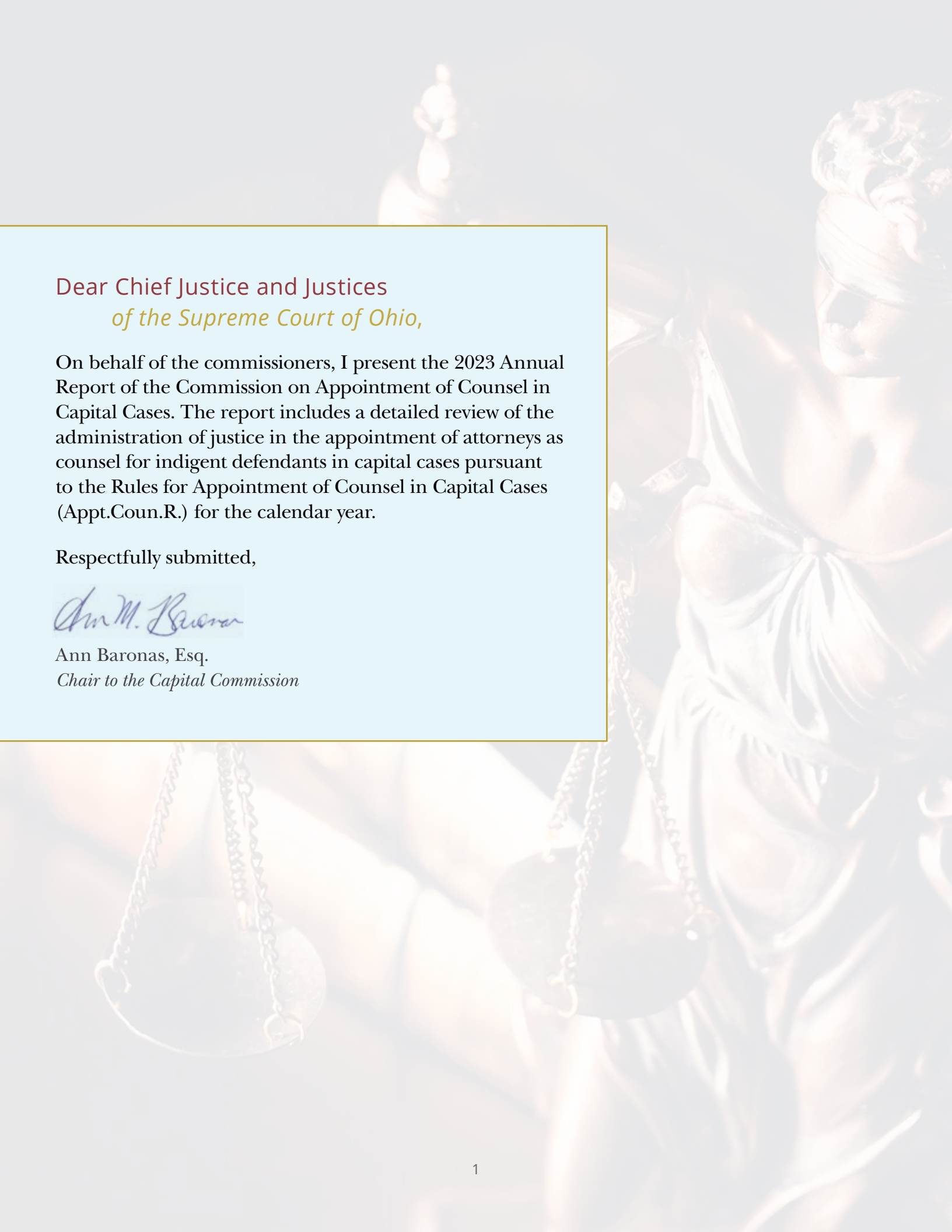
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James P. Cappelli

DEPUTY ADMINISTRATIVE DIRECTOR,
OPERATIONS

Gina White Palmer

DEPUTY ADMINISTRATIVE DIRECTOR,
LEGAL SERVICES



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

On behalf of the commissioners, I present the 2023 Annual Report of the Commission on Appointment of Counsel in Capital Cases. The report includes a detailed review of the administration of justice in the appointment of attorneys as counsel for indigent defendants in capital cases pursuant to the Rules for Appointment of Counsel in Capital Cases (Appt.Coun.R.) for the calendar year.

Respectfully submitted,



Ann Baronas, Esq.
Chair to the Capital Commission

2023 Commission Roster

Ann Baronas, Esq., *Chair*

LAW OFFICE OF ANN BARONAS, TOLEDO

Jefferson Liston, Esq., *Vice-Chair*

LAW OFFICE OF JEFFERSON LISTON, LLC, COLUMBUS

Hon. Thomas Marcelain

LICKING COUNTY COMMON PLEAS COURT, NEWARK

Kimberly Rigby, Esq.

OHIO PUBLIC DEFENDER'S OFFICE, COLUMBUS

Timothy F. Sweeney, Esq.

LAW OFFICE OF TIMOTHY FARRELL SWEENEY, CLEVELAND

Tammy White

Staff Liaison to the Commission

SUPREME COURT OF OHIO, COLUMBUS

Joshua Martin

Staff Support to the Commission

SUPREME COURT OF OHIO, COLUMBUS

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

Commission

The Commission on Appointment of Counsel in Capital Cases is comprised of five members appointed by the Chief Justice and Justices of the Supreme Court pursuant to Appt. Coun.R. 2.03. The Commission consists of one public defender, one Common Pleas Judge, and three attorneys who are engaged in the practice of law by representing persons charged with criminal offenses. Nominations are made by the Ohio Public Defender, Ohio Association of Criminal Defense Lawyers, Ohio Metropolitan Bar Association Consortium, Ohio State Bar Association (OSBA), and the Ohio Common Pleas Judges Association for the Court's consideration and appointment. The term of a Commission member is three years, with eligibility for reappointment for three consecutive full terms. After a minimum of a one-year break in service, a former commissioner who has served three consecutive full terms is eligible for reappointment.

Chairperson

Ann Baronas was elected to serve as the Commission chairperson in 2023. Ms. Baronas is a criminal defense lawyer in private practice in Toledo.

Vice-Chairperson

Jefferson Liston was elected to serve as vice-chairperson in 2023. Mr. Liston is a criminal defense lawyer in private practice in Columbus.

Staff Liaison

Tammy White, Manager, Office of Attorney Services, serves as the staff liaison to the Commission. Joshua Martin, CLE & Accommodations Specialist, Office of Attorney Services, provides support to the Commission.

2023 Summary

The Commission convened for eight meetings in 2023 to administer the requirements of the Rules for Appointment of Counsel in Capital Cases. The activities for the calendar year included:

- Certifying attorneys who were eligible to be appointed to represent indigent capital defendants;
- Reviewing applications for capital case training seminars to ensure Ohio attorneys are well trained;
- Issuing Notices of Revocation of Certification to attorneys who failed to comply with the capital case training requirements to retain certification; and
- Proposing amendments to the Rules for the Appointment of Counsel in Capital Cases.

Certification of Counsel

Prior to appointment as counsel for an indigent defendant in a capital case, an attorney must obtain certification from the Commission. The Commission ensures that attorneys who apply for certification as trial counsel or as appellate counsel have the experience that qualifies them to handle capital cases in accordance with the standards of the Rules for Appointment of Counsel in Capital Cases. The rule contains two requirements for those seeking certification to represent a capital defendant. It first imposes specific experience requirements for attorneys seeking capital certification. It also requires attorneys to attend specialized continuing legal education seminars to obtain and retain their certification. Both the experience and specialized training requirements have been revised and strengthened over the years, but they remain the core of the rule.

In 2023, the Commission certified 25 attorneys to accept appointments as trial counsel and/or appellate counsel for indigent defendants in capital cases.

Currently, there are a total of 275 attorneys certified to accept appointments in capital cases throughout Ohio. Courts can find a statewide list of attorneys who have met the certification requirements to accept appointments for indigent defendants in capital cases on the Supreme Court of Ohio [website](#).

Defense of Capital Case Training

The Commission approves the content of the continuing education courses that capital-qualified attorneys must take to become and remain qualified to represent indigent defendants in capital cases. The purpose of the educational certification is to ensure that attorneys handling capital cases are specially equipped to serve clients in this unique area of representation where juries not only determine if a defendant is guilty but must also decide if a death sentence can be imposed. The Commission interacts annually with both the OSBA and Ohio Association of Criminal Defense Lawyers (OACDL), the two primary sources of capital continuing legal education in Ohio. Commissioners regularly teach at the trainings, and taught at both the OSBA and OACDL trainings in 2023. The Commission also receives applications from attorneys seeking credit for courses offered by other organizations that generally do not receive advance Commission accreditation. The Commission acts upon these requests on a course-by-course basis, holding these courses to the same requirements required for advance accreditation. In addition to the trainings offered by the Ohio State Bar Association and Ohio Association of Criminal Defense Lawyers, the Commission approved capital case trainings offered by the National Association of Criminal Defense Lawyers, and the Administrative Office of U.S. Courts, offering attorneys the ability to comply with the training requirements to retain their certification.



Defense of Capital Case Training Returns to In-Person Classroom

Traditionally, the Commission has only accredited defense capital case continuing education seminars involving in-person courses where participants are required to gather in a central location for the requisite hours of classroom-type training (which usually also include smaller breakout sessions). This is the preferred format for defense capital case training. During the pandemic and through 2022, the Commission authorized attorneys to complete the required capital defense training by live-webinars so that attorneys could maintain their certification and to ensure judges were able to appoint quality representation for those charged with or convicted of a capital offense.

While live-webinar courses provide an opportunity for webinar participants to submit questions in real time and for the instructor to address them contemporaneously, they do not offer the same opportunity for audience participation as the traditional classroom-approved courses. In 2023, the Commission notified attorneys and sponsors of defense capital case trainings that live webinars would no longer be approved, and that

trainings must be held in a live in-person classroom environment to meet the capital case training requirements.

Revocation of Certification

The Rules for Appointment of Counsel in Capital Cases require attorneys certified to accept appointments as counsel in capital cases to complete, every two years, at least twelve hours of training on the defense of capital cases. If certified as appellate counsel, at least six hours of the required twelve hours must be training on the appeal of capital cases. Failure to comply with the training requirements results in the revocation of the attorney's certification. If an attorney is serving as counsel in a capital case at the time of revocation, the attorney must immediately notify in writing the indigent defendant, the appointing court, and the Supreme Court staff liaison to the Commission. In 2023, the Commission revoked the certification of sixteen attorneys who failed to comply with the capital case training requirements pursuant to Appt. Coun.R. 4. Until an attorney's certification is reinstated, the attorney is not eligible to accept future appointments as counsel for indigent defendants in capital cases.

2024 Anticipated Projects

In 2024, the Commission will continue to pursue activities consistent with its mission. The Commission anticipates working on the following projects:

- Continue to work with IT to develop a new application to track attorney certifications and capital cases in accordance with the mandates of the rule.
- Continue to collaborate with sponsors of defense of capital case trainings, including appellate and post-conviction trainings.
- Review the qualifications for certification are adequate to ensure that attorneys are qualified and prepared to assume appointments in capital cases.

Proposed Rule Amendments

On May 4, 2023, the Commission presented to the Court final proposed amendments to the Rules for the Appointment of Counsel in Capital Cases to clarify that the rule applies to all stages of state capital litigation, including direct appeal and state postconviction petitions. The Court declined to move forward with the proposed rule amendments.

Capital Case Notification

In 2023, the records reflect the Supreme Court of Ohio received a total of 12 Notices to Supreme Court of Ohio of Filing of Indictment Charging Aggravated Murder with Specification(s) of Aggravating Circumstances pursuant to R.C. 2929.021(A). The Supreme Court of Ohio [Capital Indictment Table](#) provides a list of all notices filed with the Court.

Conclusion

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

