

## **PROPOSED AMENDMENTS TO THE RULES FOR APPOINTMENT OF COUNSEL IN CAPITAL CASES**

Comments Requested: The Supreme Court of Ohio will accept public comments until January 12, 2023, on the following proposed amendments to the Rules for Appointment of Counsel in Capital Cases.

Comments on the proposed new rules and amendments should be submitted in writing to: Tammy White, Attorney Services Manager, Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, or [apptcoun@sc.ohio.gov](mailto:apptcoun@sc.ohio.gov) not later than January 12, 2023. 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

### 1 **Appt.Coun.R. 1.04. Applicability.**

2  
3 The Rules for Appointment of Counsel in Capital Cases shall apply in ~~either of~~ all of the following  
4 cases:

5  
6 (A) An indigent defendant has been charged with aggravated murder and the indictment  
7 includes one or more specifications of aggravating circumstances listed in R.C.  
8 2929.04(A);

9  
10 (B) An indigent juvenile defendant has been charged with aggravated murder and the  
11 indictment includes one or more specifications of aggravating circumstances listed in R.C.  
12 2929.04(A), even though the defendant is under eighteen years of age and cannot be  
13 sentenced to death;

14  
15 (C) An indigent defendant has been sentenced to death for which the defendant seeks  
16 appointment of counsel to pursue a direct appeal as of right;

17  
18 (D) An indigent defendant has been sentenced to death for which the defendant seeks  
19 appointment of counsel to pursue a petition for postconviction relief or an appeal related  
20 to the denial of the petition pursuant to R.C. 2953.21 or 2953.23.

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22 Effective Date: February 1, 2015

23 Amended: \_\_\_\_\_  
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### 26 **Appt.Coun.R. 1.06. ~~Definition~~ Definitions.**

27  
28 As used in Appt.Coun.R. 3.01 through ~~3.05, “trial”~~ 3.07:

#### 29 30 (A) **Trial**

31  
32 “Trial” means a case that has concluded with a judgment of acquittal pursuant to  
33 Crim.R. 29 or submission to a jury for decision and verdict.

#### 34 35 (B) **Capital postconviction petition case**

36  
37 “Capital postconviction petition case” means either of the following:

38  
39 (1) A case involving the preparation, filing, and litigation in an Ohio  
40 trial court of a petition on behalf of a death-sentenced Ohio petitioner  
41 pursuant to R.C. 2953.21 or 2953.23;

42  
43 (2) A case involving the preparation, filing, and litigation in a federal  
44 trial court of a habeas corpus petition on behalf of a death-sentenced Ohio  
45 petitioner pursuant to 28 U.S.C. 2241, 2254, or 2255.

46  
47 **(C) Noncapital postconviction petition case**  
48

49 “Noncapital postconviction petition case” means either of the following:  
50

51 (1) A case involving the preparation, filing, and litigation in an Ohio  
52 trial court of a petition on behalf of a non-death-sentenced Ohio petitioner  
53 pursuant to R.C. 2953.21 or 2953.23;  
54

55 (2) A case involving the preparation, filing, and litigation in a federal  
56 trial court of a habeas corpus petition on behalf of a non-death-sentenced  
57 Ohio petition pursuant to 28 U.S.C. 2241, 2254, or 2255.  
58

59 Effective Date: February 1, 2015

60 Amended: \_\_\_\_\_  
61

62  
63 **Appt.Coun.R. 3.01. General Certification Requirements.**  
64

65 **(A) Requirement**  
66

67 Prior to appointment as counsel for an indigent defendant in a capital case pursuant to  
68 Appt.Coun.R. 5.02 ~~or 5.03~~ through 5.06, an attorney shall obtain certification from the  
69 Commission on Appointment of Counsel in Capital Cases.  
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71 **[Existing language unaffected by the amendments is omitted to conserve space]**  
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73 Effective Date: February 1, 2015

74 Amended: \_\_\_\_\_  
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76  
77 **Appt.Coun.R. 3.04. Certification Requirement for Appellate Counsel.**  
78

79 **(A) Requirement**  
80

81 Prior to appointment as appellate counsel for an indigent defendant in a capital case for a  
82 direct appeal as of right pursuant to Appt.Coun.R. 5.03, an attorney shall obtain  
83 certification from the Commission on Appointment of Counsel in Capital Cases.  
84

85 **(B) Qualifications**  
86

87 An applicant for certification under division (A) of this rule shall meet all of the following  
88 qualifications:  
89

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

- 93  
94 (2) Have experience as counsel in the appeal of at least three felony trial  
95 convictions in the three years prior to making application;  
96  
97 (3) Comply with the general certification requirements of Appt.Coun.R. 3.01;  
98  
99 (4) Comply with the training requirements of Appt.Coun.R. 4.03.

100  
101 Effective Date: February 1, 2015

102 Amended: \_\_\_\_\_  
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104  
105 **Appt.Coun.R. 3.05. Certification Requirement for Postconviction Lead Counsel.**

106  
107 **(A) Requirement**  
108

109 Prior to appointment as lead counsel for an indigent defendant in a capital postconviction  
110 petition case or any appeals pursuant to Appt.Coun.R. 5.04, an attorney shall obtain  
111 certification from the Commission on Appointment of Counsel in Capital Cases.  
112

113 **(B) Qualifications**  
114

115 An applicant for certification under division (A) of this rule shall meet all of the following  
116 qualifications:  
117

118 (1) Possess at least five years of criminal litigation experience in Ohio courts  
119 of common pleas, postconviction litigation experience in Ohio courts, criminal  
120 appellate experience in Ohio courts of appeals or the Supreme Court, or federal  
121 habeas corpus experience representing federal or state offenders in federal trial or  
122 appellate courts;  
123

124 (2) Possess any of the following qualifications:  
125

126 (a) In the ten years prior to making application, represented a petitioner  
127 as lead counsel in preparing, filing, and litigating a trial court postconviction  
128 or habeas petition in at least one capital postconviction petition case,  
129 regardless of whether the case is closed or still pending. The petition shall  
130 have been filed during the ten-year period or significant litigation on the  
131 filed petition shall have occurred in the trial court during the ten-year period.  
132

133 (b) In the ten years prior to making application, represented a petitioner  
134 as co-counsel in preparing, filing, and litigating a trial court postconviction  
135 or habeas petition in at least two capital postconviction petition cases,  
136 regardless of whether the case is closed or still pending. The petitions shall  
137 have been filed during the ten-year period or significant litigation on the

138 filed petitions shall have occurred in the trial court during the ten-year  
139 period.

141 (c) In the ten years prior to making application, have at least nine  
142 hundred hours of experience in preparing, filing, and litigating at least one  
143 capital postconviction petition case.

144  
145 (3) Possess any of the following qualifications:

146  
147 (a) Certification as trial lead counsel, trial co-counsel, or appellate  
148 counsel in capital cases pursuant to Appt.Coun.R. 3.02, 3.03, or 3.04;

149  
150 (b) Have prior experience representing a capital petitioner-appellant in  
151 state or federal appellate court in the appeal of at least two capital  
152 postconviction petition cases or capital federal habeas cases;

153  
154 (c) Have prior experience conducting an evidentiary hearing in at least  
155 one capital postconviction petition case.

156  
157 (4) Comply with the general certification requirements of Appt.Coun.R. 3.01;

158  
159 (5) Comply with the training requirements of Appt.Coun.R. 4.05.

160  
161 Effective Date: \_\_\_\_\_

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164 **Appt.Coun.R. 3.06. Certification Requirement for Postconviction Co-Counsel.**

165  
166 **(A) Requirement**

167  
168 Prior to appointment as co-counsel for an indigent defendant in a capital postconviction  
169 petition case or an appeal pursuant to Appt.Coun.R. 5.04, an attorney shall obtain  
170 certification from the Commission on Appointment of Counsel in Capital Cases.

171  
172 **(B) Qualifications**

173  
174 An applicant for certification under division (A) of this rule shall meet all of the following  
175 qualifications:

176  
177 (1) Possess at least three years of criminal litigation experience in Ohio courts  
178 of common pleas, postconviction litigation experience in Ohio courts, criminal  
179 appellate experience in Ohio courts of appeals or the Supreme Court, or federal  
180 habeas corpus experience representing federal or state offenders in federal trial or  
181 appellate courts;

182  
183 (2) Possess at least one of the following qualifications:

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(a) In the ten years prior to making application, represented a petitioner in preparing, filing, and litigating a trial court postconviction or habeas petition in at least two felony capital or noncapital postconviction petition cases, regardless of whether the cases are closed or still pending, including at least one murder conviction. The petitions shall have been filed during the ten-year period or significant litigation on the filed petitions occurred in the trial court during the ten-year period.

(b) In the ten years prior to making application, have at least five hundred hours of experience in preparing, filing, and litigating at least one capital postconviction petition case.

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

(4) Comply with the training requirements of Appt.Coun.R. 4.05.

Effective Date: \_\_\_\_\_

**Appt.Coun.R. 3.07.                      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~~ 3.06 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~~ 3.06 and any other relevant considerations.

Effective Date: February 1, 2015

Amended: \_\_\_\_\_

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

In the two-year period prior to seeking certification for appointment as trial counsel, appellate counsel, or postconviction counsel for indigent defendants in capital cases pursuant Appt.Coun.R. 3.02 ~~or 3.03~~ through 3.06 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

Amended: \_\_\_\_\_

231 **Appt.Coun.R. 4.05. Capital-Postconviction-Case-Representation Training.**

232  
233 In the two-year period prior to seeking certification for appointment as counsel for indigent  
234 defendants in capital postconviction cases pursuant to Appt.Coun.R. 3.05 or 3.06 and every two  
235 years thereafter, an attorney shall satisfactorily complete at least twelve hours of training on the  
236 defense of capital cases accredited by the Commission on Appointment of Counsel in Capital  
237 Cases. At least six hours of the training shall be on the representation of petitioners in capital  
238 postconviction petition cases.

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240 Effective Date: \_\_\_\_\_

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243 **Appt.Coun.R. 4.06. Capital-Postconviction-Case-Representation Training Accreditation.**

244  
245 **(A) Training Program Topics**

246  
247 To be accredited by the Commission on Appointment of Counsel in Capital Cases, a  
248 training program in capital case postconviction representation may include, but need not  
249 be limited to, presentations and training in the following areas:

- 250  
251 (1) An overview of current developments in death penalty law;
- 252  
253 (2) Completion, correction, and supplementation of the trial and direct appeal  
254 record;
- 255  
256 (3) Investigation of factual issues and legal claims not developed in the trial  
257 court or direct appeal record;
- 258  
259 (4) Identification, preservation, and presentation of constitutional issues;
- 260  
261 (5) Evidentiary standards in capital postconviction cases;
- 262  
263 (6) The role of state postconviction procedures in federal habeas corpus cases;
- 264  
265 (7) Procedure and practice in collateral litigation, extraordinary remedies,  
266 federal habeas corpus litigation, and clemency petitions;
- 267  
268 (8) Identification, preservation, and presentation of ineffective assistance of  
269 counsel claims in the postconviction petition;
- 270  
271 (9) The relationship of an attorney with the postconviction petitioner, the  
272 family of the petitioner, the family of the victim, prior counsel for petitioner, the  
273 prosecutor, and the trial court;
- 274  
275 (10) The best practices for representation of indigent petitioners in capital cases  
276 promulgated by the commission pursuant to Appt.Coun.R. 2.02(A)(4).

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**(B) Audio or video presentations**

The commission shall not accredit a training program in capital case postconviction representation 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 capital case postconviction representation that is offered to prosecuting attorneys.

Effective Date: \_\_\_\_\_

**Appt.Coun.R. 4.07. Sponsor Application for Accreditation.**

**(A) Requirement**

A sponsor of a training program offered pursuant to Appt.Coun.R. 4.02 ~~or 4.04~~ through 4.06 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~~ through 4.06 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~~ through 4.06 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~~ through 4.06, 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



323 attendee, it includes a program curriculum, individual faculty biographical  
324 information, a written breakdown of sessions attended and credit hours received if  
325 the training program held concurrent sessions, and proof of attendance.  
326

327 Effective Date: February 1, 2015

328 Amended: \_\_\_\_\_  
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331 **Appt.Coun.R. ~~4.06.~~ 4.08. Verification of Attendance and Credit.**  
332

333 **[Existing language unaffected by the amendments is omitted to conserve space]**  
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335 Effective Date: February 1, 2015

336 Amended: \_\_\_\_\_  
337  
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339 **Appt.Coun.R. ~~4.07.~~ 4.09. Noncompliance with Training Requirements.**  
340

341 **(A) Revocation of certification**  
342

343 By March 31st of each year, the Commission on Appointment of Counsel in Capital Cases  
344 shall review the list of attorneys certified during the prior year for appointment as counsel  
345 for indigent defendants in capital cases pursuant to Appt.Coun.R. 3.01 through ~~3.04~~ 3.07.  
346 The commission shall revoke the certification of an attorney who has not complied with  
347 the applicable training requirements of Appt.Coun.R. 4.01 ~~and 4.03~~ through 4.05. Except  
348 as provided in division (B) of this rule, an attorney whose certification has been revoked  
349 shall not be eligible to accept future appointments as counsel for indigent defendants in  
350 capital cases pursuant to Appt.Coun.R. 5.02 ~~or 5.03~~ through 5.04.  
351

352 **(B) Reinstatement of certification**  
353

354 The commission may reinstate the certification of an attorney who has previously been  
355 certified for appointment as counsel for indigent defendants in capital cases pursuant to  
356 Appt.Coun.R. 3.01 through ~~3.04~~ 3.07, but whose certification has been revoked pursuant  
357 to division (A) of this rule. The attorney shall submit a new application demonstrating that  
358 the attorney has complied with the applicable training requirements of Appt.Coun.R. 4.01  
359 ~~and 4.03~~ through 4.05.  
360

361 Effective Date: February 1, 2015

362 Amended: \_\_\_\_\_  
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365 **Appt.Coun.R. 5.01. Verification of Indigency.**  
366

367 When appointing attorneys as counsel to represent an indigent defendant in a capital case pursuant  
368 to Appt.Coun.R. 5.02 ~~or 5.03~~ through 5.04 for which the county will apply to the Ohio Public

369 Defender Commission for reimbursement of costs, the court shall require the defendant to  
370 complete a financial disclosure form. The court shall follow Ohio Adm.Code 120-1-3 as a  
371 guideline to determine indigency and standards of indigency.  
372

373 Effective Date: February 1, 2015

374 Amended: \_\_\_\_\_  
375  
376

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

378  
379 **(A) Appointment**

380  
381 Except as provided in Appt.Coun.R. ~~5.04~~ 5.05, a court shall appoint at least two attorneys  
382 to represent an indigent defendant in either of the following cases:  
383

384 **[Existing language unaffected by the amendments is omitted to conserve space]**  
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386 Effective Date: February 1, 2015

387 Amended: \_\_\_\_\_  
388  
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390 **Appt.Coun.R. 5.03. Appointment of Appellate Counsel.**

391  
392 **(A) Appointment**

393  
394 Except as provided in Appt.Coun.R. ~~5.04~~ 5.05, a court shall appoint at least two attorneys  
395 to appeal a case where the trial court has imposed the death penalty on an indigent  
396 defendant.  
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398 **[Existing language unaffected by the amendments is omitted to conserve space]**  
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400 Effective Date: February 1, 2015

401 Amended: \_\_\_\_\_  
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404 **Appt.Coun.R. 5.04. Appointment of Capital Postconviction Counsel.**

405  
406 **(A) Appointment**

407  
408 Except as provided in Appt.Coun.R. 5.05, a court shall appoint at least two attorneys to  
409 represent an indigent capitally sentenced petitioner seeking to file a petition for  
410 postconviction relief under R.C. 2953.21 or R.C. 2953.23, and those appointments shall  
411 include and extend to all appeals in the Ohio appellate courts and the Supreme Court of  
412 Ohio, which may follow from the filing of such petition in the Ohio state trial court.  
413  
414

415 **(B) Postconviction counsel designation**

416  
417 The court shall designate attorneys appointed as counsel pursuant to division (A) of this  
418 rule as “postconviction counsel.” To be designated as postconviction counsel, the attorneys  
419 shall have been certified for appointment as such by the Commission on Appointment of  
420 Counsel in Capital Cases pursuant to Appt.Coun.R. 3.05 through 3.06. At least one of the  
421 attorneys appointed shall be qualified as lead postconviction counsel, pursuant to  
422 Appt.Coun.R. 3.05.

423  
424 **(C) Office in Ohio**

425  
426 At least one of the attorneys appointed as counsel pursuant to division (A) of this rule shall  
427 maintain a law office in Ohio.

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430 **Appt.Coun.R. 5.05. Private Counsel.**

431  
432 **[Existing language unaffected by the amendments is omitted to conserve space]**

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434 Effective Date: February 1, 2015

435 Amended: \_\_\_\_\_

436  
437  
438 **Appt.Coun.R. 5.05. 5.06. Distribution of Appointments.**

439  
440 A court should distribute its appointments of attorneys as counsel for indigent defendants in capital  
441 cases pursuant to Appt.Coun.R. 5.02 ~~and 5.03~~ through 5.04 as widely as possible among the  
442 attorneys in the jurisdiction of the court and the contiguous jurisdictions who are certified for  
443 appointment pursuant to Appt.Coun.R. 3.01 through ~~3.05~~ 3.07.

444  
445 Effective Date: February 1, 2015

446 Amended: \_\_\_\_\_

447  
448  
449 **Appt.Coun.R. 5.06. 5.07. Workload of Counsel.**

450  
451 **(A) Consideration by court**

452  
453 In appointing an attorney as counsel for an indigent defendant in a capital case pursuant to  
454 Appt.Coun.R. 5.02 ~~or 5.03~~ through 5.04, the court shall consider the nature and volume of  
455 the workload of the attorney to ensure the attorney, if appointed, can direct sufficient  
456 attention to the defense of the case at trial, the appeal of the case, or the prosecution of the  
457 postconviction petition and provide competent representation to the defendant.

458  
459  
460

461 **(B) Responsibility of attorney**

462  
463 An attorney appointed as counsel for an indigent defendant in a capital case pursuant to  
464 Appt.Coun.R. 5.02 ~~or 5.03~~ through 5.04 shall provide the client with competent  
465 representation in accordance with constitutional and professional standards. The attorney  
466 shall not accept assignments that, by reason of their excessive size, interfere with the  
467 rendering of competent representation or lead to the breach of professional obligations.  
468

469 Effective Date: February 1, 2015

470 Amended: \_\_\_\_\_

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473 **Appt.Coun.R. ~~5.07~~ 5.08. Notice of Appointment.**

474

475 Within two weeks of appointment of an attorney as counsel for an indigent defendant in a capital  
476 case pursuant to Appt.Coun.R. 5.02 ~~or 5.03~~ through 5.04, the court shall notify the Supreme Court  
477 staff liaison to the Commission on Appointment of Counsel in Capital Cases. The notice shall be  
478 on a form prescribed by the commission and include all of the following:

479

480 (A) The name of the court and the judge assigned to the case;

481

482 (B) The case name and number;

483

484 (C) A copy of the indictment;

485

486 (D) The names, business addresses, telephone numbers, and information as to the  
487 certification of all counsel appointed;

488

489 (E) Any other information considered relevant by the commission or court.

490

491 Effective Date: February 1, 2015

492 Amended: \_\_\_\_\_

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494

495 **Appt.Coun.R. ~~5.08~~ 5.09. Notice of Disposition of Case.**

496

497 Within two weeks of the disposition of a ~~capital criminal trial, appeal, or postconviction petition~~  
498 case in which an attorney was appointed as counsel for an indigent defendant in a capital case  
499 pursuant to Appt.Coun.R. 5.02 ~~or 5.03~~ through 5.04, the court shall notify the Supreme Court staff  
500 liaison to the commission. The notice shall be on a form prescribed by the commission and include  
501 all of the following:

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503 **[Existing language unaffected by the amendments is omitted to conserve space]**

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505 Effective Date: February 1, 2015

506 Amended: \_\_\_\_\_

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**Appt.Coun.R. ~~5.09~~ 5.10. 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~~ through 5.04, 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

Amended: \_\_\_\_\_

**Appt.Coun.R. ~~5.10~~ 5.11. 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~~ through 5.04 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, whether the client is exempt from execution because of youth or because of a serious mental illness, 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, direct appeal representation in a capital case, and the investigation, preparation, filing and litigation of a petition for postconviction relief in a capital case, including all appeals related to the denial of postconviction relief.

**(B) Responsibilities of counsel**

The attorney designated as trial lead counsel pursuant to Appt.Coun.R. 3.02, appellate counsel pursuant to Appt.Coun.R. 3.03, or lead postconviction counsel pursuant to Appt.Coun.R. 3.04 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, *Best Practices in Capital Cases* as promulgated by the commission, and professional standards. In addition, all counsel bear a responsibility to comply with the Rules for Appointment of Counsel in Capital Cases, *Best Practices in Capital Cases*, and professional standards.

Effective Date: February 1, 2015

Amended: \_\_\_\_\_

554 **Appt.Coun.R. ~~5.11~~ 5.12. Maintenance of Certification During Appointment.**

555

556 **(A) Responsibilities of counsel**

557

558 An attorney appointed as counsel for an indigent defendant in a capital case pursuant to  
559 Appt.Coun.R. 5.02 ~~or 5.03~~ through 5.04 shall maintain certification from the Commission  
560 on Appointment of Counsel in Capital Cases as required pursuant to Appt.Coun.R. 3.01  
561 through ~~3.04~~ 3.05, as applicable, throughout the appointment. If the certification lapses  
562 during the appointment, the attorney shall immediately notify in writing the indigent  
563 defendant, the appointing court, and the Supreme Court staff liaison to the commission.  
564

565 **(B) Reinstatement of certification**

566

567 The commission may reinstate the certification of an attorney who was previously  
568 appointed as counsel for an indigent defendant in a capital case pursuant to Appt.Coun.R.  
569 5.02 ~~or 5.03~~ through 5.04, but whose certification lapsed during the appointment. The  
570 attorney shall submit a new application demonstrating that the attorney has complied with  
571 all applicable requirements and providing an explanation for the attorney's lapse of  
572 certification that is satisfactory to the commission.  
573

574 Effective Date: February 1, 2015

575 Amended: \_\_\_\_\_

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

579

580 A court that has appointed an attorney as counsel for an indigent defendant in a capital case  
581 pursuant to Appt.Coun.R. 5.02 ~~or 5.03~~ through 5.04 shall monitor the performance of the attorney  
582 to ensure the defendant is receiving high quality representation. In determining "high quality  
583 representation," the court may consider the American Bar Association's *Guidelines for the*  
584 *Appointment and Performance of Defense Counsel in Death Penalty Cases* and the Best practices  
585 in Capital Cases as promulgated by the Commission on the Appointment of Counsel in Capital  
586 Cases. The court, in addition to any other action it may take, shall report to the ~~Commission on~~  
587 ~~Appointment of Counsel in Capital Cases~~ commission an attorney who has not provided high  
588 quality representation.  
589

590 Effective Date: February 1, 2015

591 Amended: \_\_\_\_\_