

33.0 ASSIGNMENT AND COMPENSATION OF COUNSEL TO DEFEND

PART I.

- (A) No attorney will be assigned to defend any indigent person in a criminal case unless his or her name appears on one of the approved trial counsel lists as designated in paragraphs (a)(1)-(4) of this part. Any lawyer admitted to practice by the highest Court of any state of the United States is eligible to have their name entered on the appropriate list after approval of their application. The application shall identify the cases in which the applicant served as counsel, including the names of the parties, the Courts in which the cases were tried, the Court docket numbers, the names of the trial judges, the trial dates and other information as may be required by the Court. The applications will be reviewed by the Administrative Judge of the General Division of the Common Pleas Court who shall make the final determination.

The approved trial counsel lists shall remain in effect for a period of two years ending on December 31 of odd-numbered calendar years. Counsel whose name appears on the approved trial counsel lists may file an application for renewal to serve as appointed counsel to sustain eligibility. The renewal application shall be filed no earlier than three months prior to, and no later than, the expiration of the approved trial counsel list then in effect. Counsel who fails to timely file an application for renewal, shall be removed from the new approved trial counsel lists. Reinstatement shall occur upon the filing of an original application to serve as assigned counsel and final approval by the Administrative Judge.

In the interest of justice in a specific case, for good cause, the trial Court may remove an assigned attorney as defense counsel.

The following experience and qualifications shall be a prima facie basis for the inclusion of a lawyer on the lists designated below:

- (1) Assigned counsel for murder cases (including charges of murder, aggravated murder and aggravated murder with specifications).
 - (a) Trial counsel in a prior murder trial; or
 - (b) Trial counsel in four (4) first degree felony jury trials; or
 - (c) Trial counsel in any ten (10) felony or civil jury trials;
 - (d) No lawyers may appear on the list for murder cases unless they are also listed as counsel for major felony cases described below.
 - (e) Lawyers seeking appointments on capital cases must be in compliance with Common Pleas Court Superintendence Rule 20 prior to the appointment. Failure to comply will result in denial of compensation.
- (2) Assigned counsel for major felony cases (first, second and third degree felonies).
 - (a) Trial counsel in two (2) previous major felony jury trials (first, second or third degree felonies); or
 - (b) Trial counsel in any four (4) previous criminal jury trials; or
 - (c) Trial counsel in any previous six (6) criminal or civil jury trials; or

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- (d) Trial counsel in any two (2) criminal jury trials plus assistant trial counsel in any two (2) criminal jury trials.
 - (3) Assigned counsel for fourth and fifth degree felony cases.
 - (a) Trial counsel in any previous criminal or civil jury trial; or
 - (b) Assistant counsel in any two (2) civil or criminal jury trials. (4) Assigned counsel for defendants having a confirmed serious mental illness or being mentally retarded as defined in local rules 30.1 (a)(1) and 30.1 (a)(2).
 - (4) Assigned counsel for defendants having a confirmed serious mental illness or being mentally retarded as defined in Local Rules 30.1(a)(1) and 30.1(a)(2).
 - (a) Trial counsel shall meet established criteria for the appropriate offense as set forth in paragraphs (a)(1) - (3) of this part; and
 - (b) During each application period, trial counsel shall receive specific training, as approved by the judges assigned to the mental health dockets, on representing clients that have a mental illness or are mentally retarded. The application period will be every two years ending on December 31 of odd-numbered calendar years. Applications shall be submitted as described in paragraph (a) above.
- (B) For good cause, the Administrative Judge may decline to accept any application for inclusion on any list or remove the name of any lawyer from any list.

To assist attorneys in obtaining trial experience in criminal cases, and for the purposes of obtaining experience necessary for inclusion on one of the above lists, this Court will cooperate with programs organized by local bar associations in which interested attorneys may be assigned as assistant trial counsel on a non-fee basis in cooperation with regularly retained or assigned counsel in criminal case trials in this county, under the supervision of the trial judge.

- (C) Assignments of counsel for indigent defendants, not represented by the Cuyahoga County Public Defender, shall be made by the Judge assigned to the Arraignment Room. Except where:
- (1) In the interest of justice, the trial court removes counsel pursuant to paragraph (a) of this part; or
 - (2) The trial judge, on whose docket a defendant with a pending case acquires a subsequent case not yet arraigned, assigns an attorney to that case pursuant to paragraph (e) of this part.

The office of the Cuyahoga County Public Defender shall be assigned thirty five per cent (35%) of cases for which counsel are selected for indigent defendants, including all criminal assignments whether or not processed through the Arraignment Room. The Assistant Public Defender, before being assigned to represent an indigent defendant, shall also meet the established criteria.

In cases requiring the appointment of new counsel for defendants, i.e., defendants not having retained counsel and defendants without a pending case with counsel previously appointed, (i) if the case number ends in 1, 3, 5, or 7, the arraignment room judge shall appoint the public defender's office as counsel; provided however, if the defendant has co-defendant in this case whom the public defender's office currently represents, then such defendant shall have a private counsel appointed instead of the

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public defender's office; and (ii) if the case number ends in 2, 4, 6, 8, 9 or 0 then in compliance with this local rule, the arraignment room judge shall appoint the public defender's office or private counsel as the judge determines.

- (D) In all cases where a defendant has a confirmed serious mental illness or is mentally retarded as defined in local rules 30.1 (a)(1) and 30.1 (a)(2), the arraignment room judge:
- (1) Where municipal court has assigned counsel meeting established criteria as set forth in paragraph (a)(4) of this part, shall assign the same counsel to represent the defendant; or
 - (2) May assign the public defender's office. The assistant public defender, before being assigned to represent an indigent defendant, shall meet the established criteria as set forth in paragraph (a)(4) of this part; or
 - (3) May assign private counsel meeting the established criteria as set forth in paragraph (a)(4) of this part.
- (E) As a general rule, only one attorney shall be assigned to all of an indigent defendant's pending cases. The attorney's assignment shall continue until the disposition of all of the defendant's pending cases. While such cases are pending, the same attorney will be assigned as counsel for each of an indigent defendant's subsequently arraigned cases except: should the defendant be arraigned on a charge on which original counsel is not eligible for assignment, then and eligible attorney shall be assigned for such case.

Effective (06/09/2003)

- (F) During a judge's two week service in the arraignment room, no attorney may receive more than four criminal assignments for four different Defendants; provided however each attorney in addition may be assigned to capital cases and to additional cases for existing clients under the mandatory assignment procedure for defendants with multiple cases. If a different judge substitutes in the arraignment room for the regularly assigned judge, the substitute judge's assignments will be treated as the regularly assigned judge's assignments for the purpose of this Rule. (Eff. 09/01/04)

PART II.

- (A) Upon arraignment or subsequent thereto, where it appears to the Court that the defendant is without counsel and desires to have the Court assign counsel, the Court, before doing so, may require from the defendant receipt of a duly executed affidavit upon the form provided by the Court regarding his or her general background and financial status.
- (B) Assigned counsel shall receive compensation for professional services and shall be reimbursed for expenses in accordance with O.R.C.2941.51. In all cases upon completion of the service, it shall be the duty of such assigned counsel to submit a completed affidavit and entry for assigned counsel fees. The trial judge, after due consideration, shall determine the amount of compensation within the statutory limit in accordance with the following schedule:

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ASSIGNED COUNSEL FEE SCHEDULE – *Effective February 1, 2014*

GENERAL DIVISION

TYPE	MINIMUM COMPENSATION	MAXIMUM COMPENSATION
Aggravated Murder with Specifications (Death Penalty) One Attorney Two Attorneys	\$0	\$60,000
Aggravated Murder without Specifications One Attorney Two Attorneys	\$1,406	\$4,500 \$8,000
Murder	\$1,667	\$4,000
Rape Victim Under Age 13		\$4,000
Felony with Possible Life Sentence / Repeat Violent Offender / Major Drug Offender		\$3,500
First Degree Felonies	\$480	\$1,500
Second Degree Felonies	\$435	\$1,125
Third Degree Felonies	\$367	\$1,000
Fourth Degree Felonies	\$256	\$800
Fifth Degree Felonies	\$195	\$750
Sexual Predator Hearing	\$305	\$525
Misdemeanors (Degrees 1-4)		\$150
<u>General Division Hourly Rate</u>		
In Court	\$60	\$60
Out of Court	\$50	\$50

GENERAL DIVISION

Post Conviction Proceedings:

TYPE	MINIMUM COMPENSATION	MAXIMUM COMPENSATION
With Evidentiary Hearing	\$0	\$170
Without Evidentiary Hearing	\$0	\$100
Habeas Corpus, Parole, Probation and All Other Proceedings Not Elsewhere Classified; Habeas Corpus with Evidentiary Hearing; Habeas Corpus without Evidentiary Hearing	\$0	\$100

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JUVENILE PROCEEDINGS:

(Delinquency Offense)

TYPE	MINIMUM COMPENSATION	MAXIMUM COMPENSATION
Murder	\$1,250	\$2,750
All Manslaughter / Homicide	\$500	\$1,000
First Degree Felonies	\$320	\$750
Second Degree Felonies	\$290	\$580
Third Degree Felonies	\$220	\$440
Fourth Degree Felonies	\$160	\$330
Fifth Degree Felonies	\$40	\$250
Misdemeanors	\$0	\$250
Traffic Offenses	\$0	\$250
Guardian Ad Litem	\$0	\$500
Bindovers	\$0	\$350
Guardian Ad Litem-Custody Reviews	\$0	\$200
All Other (non-delinquency)	\$0	\$250
Temporary Custody		\$400
Permanent Custody		\$800
<u>Juvenile Hourly Rate</u>		
In Court	\$50	\$50
Out of Court	\$40	\$40

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COURT OF APPEALS

Appellate Proceedings:

TYPE	MINIMUM COMPENSATION	MAXIMUM COMPENSATION
Aggravated Murder – Death Sentence	\$1,050	\$15,000
Aggravated Murder with Specifications	\$1,050	\$4,500
Aggravated Murder without Specifications	\$1,050	\$4,500
Murder	\$700	\$2,250
Felonies Other than Below	\$0	\$1,125
Voluntary Manslaughter, Involuntary Manslaughter and Negligent Homicide	\$350	\$1,250
Aggravated Vehicular Homicide and Vehicular Homicide	\$350	\$1,250
Misdemeanors Except Those Noted Above	\$0	\$875
Other / Juvenile	\$0	\$875
<u>Appellate Proceedings</u> Death Sentence Hourly Rate In Court Out of Court	\$45	\$95 \$60 \$50

Provided however, where a sexually violent predator specification under R.C. 2941.148(A) increases the potential penalty for any offense to a life sentence, the maximum compensation under this schedule shall be increased by one thousand dollars (\$1,000).

The compensation to be paid for such services shall not exceed the amount listed in the compensation schedule except in extraordinary cases when upon motion it shall be determined by the trial judge, the administrative judge and another judge to authorize additional payment. The motion should set forth in detail the basic reasons such request, the amount in excess of the fee schedule requested and an itemized statement of services rendered. Motions for extraordinary compensation shall be filed simultaneously with the usual affidavit and entry for assigned counsel fees.

Individuals appointed as Guardian Ad Litem may request payment of fees exceeding this schedule using the above procedure.

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- (C) Unless a defendant on probation or community control sanctions knowingly and intelligently, orally and in writing, waives his right of counsel at a probation violation hearing. The defendant shall be entitled to counsel at such hearing retained or assigned. Assigned counsel shall be compensated in accordance with the fee schedule for habeas corpus, parole, probation, community control sanctions, and all other proceedings not elsewhere classified in Part II (B) of Rule 33.
- (D) Defendants returned to this Court for a hearing pursuant to O.R.C.2945.40, shall be represented by counsel who shall be appointed and compensated as provided in part (C) of this rule.
- (E) It is intended that counsel assigned to represent indigent defendants shall themselves investigate cases to which they have been assigned.

Investigators shall not be employed by defense counsel except by leave of Court, and then only in cases where the defendant is charged with aggravated murder or murder. Only individuals licensed by the State of Ohio as a private investigator under a Class A or Class B license shall be appointed and paid under this section. In these cases, counsel shall make application for the use of such investigator in writing at least 30 days before trial. The application should set forth in detail the basic reason for the need for such request and the approximate amount that would be incurred if the request was granted, including written verification that the investigator currently holds a valid Class A or Class B license issued under O.R.C. Chapter 4749.

The trial Court shall journalize its decision.

The compensation to be paid for such investigation shall not exceed \$500.00 except in extraordinary cases when it shall not exceed \$1,000.00. Extraordinary fees shall be determined by the trial judge, the administrative judge and another judge. In every case, the investigator shall submit an itemized statement of services rendered. Investigators shall not receive compensation at a rate greater than twenty-five dollars (\$25.00) per hour.

Bills for such investigation shall be filed with defense counsel's application for attorney fees and shall be paid as part of counsel's expenses.

- (F) Counsel assigned pursuant to Local Rule, Part I (D) to multiple pending cases for a single defendant shall receive compensation for professional services as follows: no more than one maximum fee for one case containing the highest degree offense plus the minimum fee for each of all other cases assigned to counsel for that defendant.
- (G) This Court shall not consider approval of or payment for and shall not approve or pay any amount for any expert or specialist relating to psychological, mitigation or similar services under R.C. 2929.024 or otherwise in a criminal action unless there is filed with the Clerk of Courts or Court an application by counsel for the defendant which expressly provides, with specificity, the following information:
 - (1) The name of the individual(s) sought to be appointed, his/her professional qualifications or credentials demonstrated by an attached resume or curriculum vitae;
 - (2) The services sought to be provided including, but not limited to, research, investigation, testimony and/or consultation;
 - (3) The hourly rate to be charged by such individual for each service and the estimated number of hours;

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- (4) Any additional expense anticipated in connection with such services; and
- (5) The total projected expense anticipated for each individual.

The above described application may be filed under seal and/or ex parte with the prior permission of the trial judge to whom the case is assigned.