

Cuyahoga County Common Pleas Court Local Rules

33.0 ASSIGNMENT AND COMPENSATION OF COUNSEL TO DEFEND

Due to changes to the Ohio Administrative Code regarding the qualifications of and the process for appointing assigned counsel to indigent clients (OAC:120-1-10), the Judges of the General Division of the Cuyahoga County Common Pleas Court voted to post for comment proposed changes to Local Rule 33. The proposed amendments to Local Rule 33 can be found below.

These proposed amendments are required in order for the Court to be in substantial compliance with OAC:120-1-10 and in order for the County to continue to receive partial reimbursement for assigned counsel fees.

Please know that that these proposed changes to Local Rule 33 were developed after a number of discussions among the Judges on the Court's Criminal Rules Committee and have been reviewed by the Cuyahoga County Criminal Defense Lawyers Association. What follows are some of the bullet points outlining the most important proposed revisions to Local Rule 33:

- Ensure that appointments are distributed as widely as possible among qualifying members of the bar with judicial discretion to pair the seriousness and complexity of the case with the attorney assigned.*
- Minimum requirements for each level of felony have been adjusted to be consistent with the OAC.*
- Addition of an "Appointed Counsel Review Board" to approve candidates, and, if necessary, to remove attorneys from the list.*
- Mentors are to be provided from the qualified attorneys for new members of the assigned counsel list not already meeting the qualification requirements.*
- The section limiting the number of assignments to any one counsel during the two week arraignment assignment has been deleted.*

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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)-(7) and meets the minimum requirements in paragraph (8) 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 Appointed Counsel Review Board which shall make the final determination.

The approved trial counsel lists shall be in effect for a period of two years consistent with counsel's biennial continuing legal education reports and will end on January 31 of the following year. 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. Applications for reinstatement may be filed at any time. 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 Judge or the appointed Counsel Review Board may remove an assigned attorney as defense counsel.

The following experience and qualifications shall be the minimum requirements for the inclusion of a lawyer on the lists designated below:

- (1) OVI cases:
 - (a) Attorneys appointed to represent indigent clients in OVI cases must have completed a minimum of six hours of continuing legal education, certified by the Ohio Supreme Court commission on continuing legal education, focused on OVI practice and procedure.
- (2) Felonies of the fourth and fifth degree and unspecified felonies other than murder:
 - (a) Service as assistant trial counsel in two criminal jury trials.
- (3) Felonies of the third degree without life sentences:
 - (a) Service as trial counsel in at least one criminal jury trial and service as assistant trial counsel in at least two criminal jury trials.
- (4) Felonies of the first and second degree without life sentences:
 - (a) Within five years preceding the appointment, service as trial counsel in at least two previous felony jury trials; or
 - (b) Service as trial counsel in any five previous felony trials, of which at least three must be jury trials.

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(5) Life sentences:

- (a) Within ten years preceding the appointment, service as trial or trial assistant counsel in at least two prior life sentences trials, and trial counsel in four felony jury trials which were first or second degree felony trials.

(6) Death Penalty:

- (a) Qualification for assignment for cases charging aggravated murder with a death penalty specification shall be solely governed by The Rules for Appointment of Counsel in Capital Cases.

(7) Mental Health: Assigned counsel for defendants having a confirmed serious mental illness or a developmental disability as defined in Local Rules 30.1(A) and 30.1(A)(2):

- (a) Trial counsel shall meet established criteria for the appropriate offense as set forth in paragraphs (a)(1)-(7) 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 developmentally disabled. The application period will be every two years consistent with counsels' biennial continuing education reporting and will end on January 31 of the following year.

(8) Minimum Requirement for the Assigned Counsel Lists:

- (a) Admitted in Ohio and in good standing;
- (b) Proof of legal malpractice insurance;
- (c) Proof of having obtained twelve hours of Continuing Legal Education credits in criminal practice and procedure during the two years of counsel's biennial continuing education period which courses may include subject matter such as trial practice, evidence, voir dire, criminal rules, capital cases, and case law updates; and
- (d) Proof of having completed the Court's mental health training seminar.

(B) Appointed Counsel Review Board:

(1) Statement of Purpose:

Delay in criminal and civil cases in the Courts of Common Pleas throughout the state of Ohio is a serious problem in the administration of justice. Constitutional courts were created to serve the litigants and the interest of the public at large, not for the convenience or benefit of judges and lawyers. Unnecessary delay erodes the public's confidence in the judicial system.

It is the obligation of the judges of the Court of Common Pleas, Cuyahoga County, Ohio, to operate the Court in a manner that is lawful, fair, just, and efficient for the benefit of the citizens of Cuyahoga County and all other litigants that come before it. To that end, the following rules are designed (1) to expedite the disposition of both criminal and civil cases in this Court, while at the same time safeguarding the rights of litigants to the just processing of their cases; (2) to expedite and make consistent the disposition of cases in the general branch of the Court; and (3) to serve the public interest which mandates the prompt disposition of all cases before this Court.

(2) Appointed Counsel Review Board:

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There is hereby created an Appointed Counsel Review Board. The members of the Appointed Counsel Review Board shall include the Administrative Judge, the Chairman of the Criminal Rules Committee and the Senior Judge from the General Division. For purposes of this rule, the Senior Judge is the judge with the most years of continuous service on The Cuyahoga County Common Pleas Court, General Division. Any vacancies on the committee will be filled by appointment by the Administrative Judge. The duties and responsibilities of the Appointed Counsel Review Board shall be:

- (a) To approve a Trial Counsel List from which private counsel shall be selected to represent indigent defendants in criminal cases;
- (b) To approve an application form and process to be used by private counsel seeking to be listed on the Trial Counsel List;
- (c) To approve applications from private counsel for listing on the Trial Counsel List;
- (d) To approve applications from counsel accepted to practice in Ohio through reciprocity from another state.
- (e) To evaluate the performance of private counsel representing indigent defendants in criminal cases against the standards set forth in section (A) of this rule;
- (f) To remove private counsel from the Trial Counsel List;
- (g) To require private counsel, when appropriate, to undertake remedial action in order to remain on the Trial Counsel List; AND
- (h) To require private counsel to undertake appropriate continuing legal education.

(3) Action by Appointed Counsel Review Board:

Any action taken by the Appointed Counsel Review Board to include an attorney or to exclude an attorney from the Trial Counsel List shall be approved by a majority of the judges.

(4) Mentors:

Each applicant for inclusion on the Trial Counsel List not already meeting the requirements for inclusion must have a designated mentor. The mentor will co-sign the private counsel's application for inclusion on the Trial Counsel List, agreeing to act as an advisor to and resource for the applicant until the applicant has met the experience criteria set by the Appointed Counsel Review Board. In order to serve as a mentor, a criminal practice attorney must be approved counsel on the Trial Counsel List with the capability of being assigned all levels of criminal cases with the exception of capital cases.

Further, an attorney who qualifies as a mentor may only mentor a maximum of three applicants at any one time. Any criminal attorney, who meets the qualifications to serve as a mentor, but refuses to do so, may be excluded from the Trial Counsel List.

(5) The Application Process:

The Appointed Counsel Review Board shall meet as frequently as necessary in order to review applications for inclusion on the Trial Counsel List. After review of the pending applications, the Board shall recommend those attorneys it deems qualified for inclusion on the Trial Counsel List. These recommendations shall be presented at the next monthly meeting of the judges. A majority

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of the judges shall either approve or disapprove the recommendations of the Board. The names of those attorneys approved by a vote of the judges shall be placed on the Trial Counsel List.

(6) Orientation Program for New Attorneys:

In May and in November each year, the Court shall conduct a four-hour new attorney orientation program. Educational presentations shall be made by the following categories of court personnel:

- (a) Judge
- (b) Prosecutor
- (c) Public Defender
- (d) Bailiff
- (e) Court Reporter
- (f) Private Defense Counsel
- (g) Court Administration
- (h) Representative from the Criminal Clerk's Office.

(7) Grounds for Removal from the Trial Counsel List:

Any private counsel may be removed from the Trial Counsel List for the following conduct:

- (a) Failure to comply with the Code of Professional Responsibility; the Ohio Rules of Criminal Procedure; the Rules of Practice of the Cuyahoga County Court of Common Pleas.
- (b) Refusal to accept appointments.
- (c) Failure to follow the Court's billing procedures such as:
 - (i) refusal to complete request for reimbursement forms;
 - (ii) inaccurately completing the required request for reimbursement forms;
 - (iii) failing to file timely request for reimbursement forms;
 - (iv) Excess billing; and
 - (v) repeated submissions seeking fees in excess of the fee schedule.
- (d) Unprofessional behavior such as lack of preparation, tardiness, contentiousness, failure to follow through with responsibilities, or failing to treat court personnel with respect.
- (e) Repeated conflicts with indigent defendants necessitating the appointment of other counsel;
- (f) Accepting fees for representation of a defendant but only appearing in his behalf at arraignment necessitating the appointment of private counsel for the remainder of the case;
- (g) Accepting an appointment but sending other counsel to appear in behalf of the indigent defendant;
- (h) Having a case reversed by the Court of Appeals for ineffective assistance of counsel;
- (i) Seeking to withdraw, without cause, prior to the completion of the case;
- (j) Failure to timely file necessary paperwork; and
- (k) A pending disciplinary action before a local bar association or the Disciplinary Counsel.

(8) Procedure for Removing an Attorney from the Trial Counsel List:

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Anyone can file a complaint against a private attorney who is listed on the Trial Counsel List. The following procedure will be used to remove an attorney from the Trial Counsel List.

- (a) File a written complaint with the Court Administrator setting forth the reasons why the subject attorney should be removed from the Trial Counsel List.
- (b) The Appointed Counsel Review Board shall investigate the complaint and recommend that the private attorney:
 - (i) be removed from the Trial Counsel List;
 - (ii) remain on the Trial Counsel List; or
 - (iii) be suspended from the Trial Counsel List until remedial action is undertaken to correct his conduct.
- (c) The recommendation of the Appointed Counsel Review Board shall be presented to the judges at their next scheduled monthly meeting. The judges shall vote to adopt the recommendation of the Board or take such other action as a majority of them so determine to be appropriate.
- (d) Immediately following the vote by the judges, the attorney will be notified in writing of the action taken.

(9) Removal from the Trial Counsel List:

Any attorney removed from the Trial Counsel List may apply for reinstatement after one year providing the attorney completes the application process as set forth in the Local Rule.

(10) Remedial Action:

An attorney suspended from the Trial Counsel List may seek reinstatement after completing the remedial action recommended by the judges. Possible remedial action may include:

- (a) Attendance at the orientation program for new attorneys;
 - (b) The assignment of a mentor;
 - (c) Completion of applicable continuing education courses;
 - (d) A reduction in the class of felonies for which the attorney can receive appointments;
 - (e) Assignment as assistant trial counsel on a non-fee basis in cooperation with regularly retained or assigned counsel in a criminal case; OR
 - (f) Substance abuse counseling.
- (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 and appointments of counsel for defendants, not represented by the Cuyahoga County Public Defender will be distributed as widely as possible among the attorneys on the Court Assigned Counsel List designed to pair the defendant's level of offense with any attorney who meets the qualifications for assignment. The Court may exercise its discretion in making appointments from the list in order to avoid conflicts of interest, conflicts with counsel's schedule, conflicts with the Court's schedule, and in instances where the gravity of the offense requires counsel with greater experience than the next attorney on the Trial Counsel List. Any attorney appointed must be qualified for all counts in the indictment.

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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 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) When a case for arraignment contains multiple counts, assignment will be made to counsel qualified for the charge containing the longest potential sentence.
- (E) In all cases where a defendant has a confirmed serious mental illness or has a developmental disability 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)(1)-(7) 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)(1)-(7) of this part; or
 - (3) May assign private counsel meeting the established criteria as set forth in paragraph (A)(1)-(7) of this part.
- (F) 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 an eligible attorney shall be assigned for such case.

Part I: Placed for public comment 4/24/18 for sixty days to 6/23/2018

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

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counsel fees. The trial judge, after due consideration, shall determine the amount of compensation within the statutory limit in accordance with the following schedule:

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

GENERAL DIVISION

TYPE	MINIMUM COMPENSATION	MAXIMUM COMPENSATION
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

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

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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
Appellate Proceedings		
Death Sentence Hourly Rate	\$45	\$95
In Court		\$60
Out of Court		\$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.

- (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

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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;
 - (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.