

1 **Rule 8. Appointment of counsel.**

2 (a) **Right to counsel.** A defendant charged with a public offense has the right to self-
3 representation, and if indigent, has the right to court-appointed counsel if the defendant faces a
4 ~~substantial probability~~ any possibility of the deprivation of liberty.

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6 (b) **Capital case qualifications.** In all cases in which counsel is appointed to represent an
7 indigent defendant who is charged with an offense for which the punishment may be death, the
8 court shall appoint two or more attorneys to represent such defendant and shall make a finding
9 on the record based on the requirements set forth below that appointed counsel is ~~proficient~~
10 competent in the trial of capital cases. In making its determination, the court shall ensure that the
11 experience of counsel who are under consideration for appointment have met the following
12 minimum requirements:

13
14 (b)(1) at least one of the appointed attorneys must have tried to verdict six felony cases within
15 the past four years or twenty-five felony cases total;

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17 (b)(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a
18 capital or a felony homicide case which was tried to a jury and which went to final verdict;

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20 (b)(3) at least one of the appointed attorneys must have completed or taught within the past five
21 years an approved continuing legal education course or courses at least eight hours of which
22 deal, in substantial part, with the trial of death penalty cases; and

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24 (b)(4) the experience of one of the appointed attorneys must total not less than five years in the
25 active practice of law.

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27 (c) **Capital case appointment considerations.** In making its selection of attorneys for a
28 appointment in a capital case, the court should also consider at least the following factors:

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30 (c)(1) whether one or more of the attorneys under consideration have previously appeared as
31 counsel or co-counsel in a capital case;

32
33 (c)(2) the extent to which the attorneys under consideration have sufficient time and support and
34 can dedicate those resources to the representation of the defendant in the capital case now
35 pending before the court with undivided loyalty to the defendant;

36
37 (c)(3) the extent to which the attorneys under consideration have engaged in the active practice
38 of criminal law in the past five years;

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40 (c)(4) the diligence, competency, the total workload, and ability of the attorneys being
41 considered; and

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43 (c)(5) any other factor which may be relevant to a determination that counsel to be appointed will
44 fairly, efficiently and effectively provide representation to the defendant.
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46 (d) **Capital case appeals.** In all cases where an indigent defendant is sentenced to death, the
47 court shall appoint one or more attorneys to represent such defendant on appeal and shall make a
48 finding that counsel is ~~proficient~~ competent in the appeal of capital cases. To be found ~~proficient~~
49 competent to represent on appeal persons sentenced to death, the combined experience of the
50 appointed attorneys must meet the following requirements:

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52 (d)(1) at least one attorney must have served as counsel in at least three felony appeals; and

53
54 (d)(2) at least one attorney must have attended and completed within the past five years an
55 approved continuing legal education course which deals, in substantial part, with the trial or
56 appeal of death penalty cases.

57
58 (e) **Post-conviction cases.** In all cases in which counsel is appointed to represent an indigent
59 petitioner pursuant to Utah Code ~~Ann. Section~~ § 78B-9-202(2)(a), the court shall appoint one or
60 more attorneys to represent such petitioner at post-conviction trial and on post-conviction appeal
61 and shall make a finding that counsel is qualified to represent persons sentenced to death in post-
62 conviction cases. To be found qualified, the combined experience of the appointed attorneys
63 must meet the following requirements:

64
65 (e)(1) at least one of the appointed attorneys must have served as counsel in at least three felony
66 or post-conviction appeals;

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68 (e)(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a
69 post-conviction case at the evidentiary hearing, on appeal, or otherwise demonstrated proficiency
70 in the area of post-conviction litigation;

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72 (e)(3) at least one of the appointed attorneys must have attended and completed or taught within
73 the past five years an approved continuing legal education course which dealt, in substantial part,
74 with the trial and appeal of death penalty cases or with the prosecution or defense of post-
75 conviction proceedings in death penalty cases;

76
77 (e)(4) at least one of the appointed attorneys must have tried to judgment or verdict three civil
78 jury or felony cases within the past four years or ten cases total; and

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80 (e)(5) the experience of at least one of the appointed attorneys must total not less than five years
81 in the active practice of law.

82
83 (f) **Appointing from appellate roster.** When appointing counsel for an indigent defendant on
84 appeal from a court of record, the court must select an attorney from the appellate roster
85 maintained by the Board of Appellate Judges under rule 11-401 of the Utah Rules of Judicial
86 Administration, subject to any exemptions established by that rule.

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88 (f)(g) **Noncompliance.** Mere noncompliance with this rule or failure to follow the guidelines set
89 forth in this rule shall not of itself be grounds for establishing that appointed counsel
90 ineffectively represented the defendant at trial or on appeal.

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92 ~~(g)~~(h) **Cost and attorney fees.**

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94 (h)(1) Cost and attorneys' fees for appointed counsel shall be paid as described in Chapter 32 of
95 Title 77.

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97 (h)(2) Costs and attorneys fees for post-conviction counsel shall be paid pursuant to Utah Code
98 ~~Ann. Section~~ § 78B-9-202(2)(a).

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100 Effective December 19, 2018