

1 **Rule 8. Appointment of counsel.**
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3 (a) **Right to counsel.** A defendant charged with a public offense has the right to self-
4 representation, and if indigent, has the right to court-appointed counsel if the defendant faces any
5 possibility of the deprivation of liberty.
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7 (b) **Capital case qualifications.** In all cases in which counsel is appointed to represent an
8 indigent defendant who is charged with an offense for which the punishment may be death, the
9 court shall appoint two or more attorneys to represent such defendant and shall make a finding
10 on the record based on the requirements set forth below that appointed counsel is competent in
11 the trial of capital cases. In making its determination, the court shall ensure that the experience of
12 counsel who are under consideration for appointment have met the following minimum
13 requirements:
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15 (b)(1) at least one of the appointed attorneys must have tried to verdict six felony cases as
16 defense counsel within the past four years or twenty-five felony cases total, with at least six of
17 the twenty-five felony cases being as defense counsel;

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

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23 (b)(3) at least one of the appointed attorneys must have completed, in person, or taught within
24 the past five years an approved continuing legal education course or courses at least eight hours
25 of which deal, in substantial part, with the ~~trial of~~ representation of defendants in death penalty
26 cases; and
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28 (b)(4) the experience of one of the appointed attorneys must total not less than five years in the
29 active practice of law.
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31 (c) **Capital case appointment considerations.** In making its selection of attorneys for a
32 appointment in a capital case, the court should also consider at least the following factors:
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34 (c)(1) whether one or more of the attorneys under consideration have previously appeared as
35 counsel or co-counsel in a capital case, representing a defendant;

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

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41 (c)(3) the extent to which the attorneys under consideration have engaged in the active practice
42 of criminal law in the past five years;
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44 (c)(4) the diligence, competency, the total workload, and ability of the attorneys being
45 considered; and
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47 (c)(5) any other factor which may be relevant to a determination that counsel to be appointed will
48 fairly, efficiently and effectively provide representation to the defendant.
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50 (d) **Capital case appeals.** In all cases where an indigent defendant is sentenced to death, the
51 court shall appoint one or more attorneys to represent such defendant on appeal and shall make a
52 finding that counsel is competent in the appeal of capital cases. To be found competent to
53 represent on appeal persons sentenced to death, the combined experience of the appointed
54 attorneys must meet the following requirements:
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56 (d)(1) at least one attorney must have served as counsel in at least three felony appeals; and
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58 (d)(2) at least one attorney must have attended and completed within the past five years an
59 approved continuing legal education course which deals, in substantial part, with the trial or
60 appeal of death penalty cases.
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62 (e) **Post-conviction cases.** In all cases in which counsel is appointed to represent an indigent
63 petitioner pursuant to Utah Code § 78B-9-202(2)(a), the court shall appoint one or more
64 attorneys to represent such petitioner at post-conviction trial and on post-conviction appeal and
65 shall make a finding that counsel is qualified to represent persons sentenced to death in post-
66 conviction cases. To be found qualified, the combined experience of the appointed attorneys
67 must meet the following requirements:
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69 (e)(1) at least one of the appointed attorneys must have served as counsel in at least three felony
70 or post-conviction appeals;
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72 (e)(2) at least one of the appointed attorneys must have appeared as counsel or co-counsel in a
73 post-conviction case at the evidentiary hearing, on appeal, or otherwise demonstrated proficiency
74 in the area of post-conviction litigation;
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76 (e)(3) at least one of the appointed attorneys must have attended and completed or taught within
77 the past five years an approved continuing legal education course which dealt, in substantial part,
78 with the trial and appeal of death penalty cases or with the prosecution or defense of post-
79 conviction proceedings in death penalty cases;
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81 (e)(4) at least one of the appointed attorneys must have tried to judgment or verdict three civil
82 jury or felony cases within the past four years or ten cases total; and
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84 (e)(5) the experience of at least one of the appointed attorneys must total not less than five years
85 in the active practice of law.
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87 (f) **Appointing from appellate roster.** When appointing counsel for an indigent defendant on
88 appeal from a court of record, the court must select an attorney from the appellate roster

89 maintained by the Board of Appellate Judges under rule 11-401 of the Utah Rules of Judicial
90 Administration, subject to any exemptions established by that rule.

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

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96 (h)(1) Cost and attorneys' fees for appointed counsel shall be paid as described in Chapter 22 of
97 Title 78B.

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99 (h)(2) Costs and attorneys fees for post-conviction counsel shall be paid pursuant to Utah Code §
100 78B-9-202(2)(a).

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102 Effective December 19, 2018