

**RULES OF PRACTICE  
OF THE  
FRANKLIN COUNTY  
COURT OF COMMON PLEAS  
GENERAL DIVISION**

**LOCAL RULE 78. APPOINTED COUNSEL**

**78.01 Appointed Counsel Review Board.**

- A.** There is hereby created an Appointed Counsel Review Board, the membership of which includes the Presiding Judge, the Administrative Judge of the General Division, and the Chairman of the Rules Committee of the General Division. If the Presiding Judge is not a member of the General Division, or if the Presiding or Administrative Judge also chairs the Rules Committee, the Senior Judge from the General Division shall serve in lieu of the Presiding Judge.
- B.** The duties and responsibilities of the Board shall be:
- 1.** To supervise the process for appointment of private counsel to represent indigent defendants in criminal cases in the General Division, including compliance with the Qualifications process established by the Ohio Public Defender Commission [OAC 120-1-10, as amended from time to time], by Superintendence Rule 8 ["Court Appointments"], and by any supplemental requirements imposed by a majority of judges of the General Division;
  - 2.** To oversee this court's Master Appointment List [the "List"] from which private counsel are selected to represent indigent defendants in individual criminal cases, and assure compliance with Sup. R. 8;
  - 3.** To approve application forms used by those seeking inclusion on the List;
  - 4.** To preliminarily review applications from private counsel for the List;
  - 5.** To evaluate the performance of private counsel representing indigent defendants for timeliness, quality and cost-effectiveness of representation, compliance with professional standards, and other appropriate criteria;
  - 6.** To require private counsel, when appropriate, to undertake remedial legal education, substance abuse counseling, or other action to remain on the List;
  - 7.** To recommend suspension or permanent removal from the list when private counsel is publicly charged with a felony or serious misdemeanor criminal offense, or a grievance is certified by a probable cause panel of the Ohio Board of Professional Conduct; and

8. To make recommendations on the fee schedule used by this court to compensate appointed counsel, and monitor that schedule for adequacy pursuant to Sup. R. 8(C).
- C. Final action to approve attorney applications for inclusion on the List, to temporarily suspend or permanently remove attorneys from the List, or to require remedial steps to remain on the List shall be taken by a majority of the judges of the General Division upon the recommendation of the Board.

#### **78.02 Standards Expected of Appointed Counsel.**

Attorneys seeking to represent indigent defendants in criminal cases before this court must assure, and upon request from time to time certify to this court in writing, their full compliance with Qualifications set by the Ohio Public Defender Commission for counsel accepting criminal appointments. Appointed counsel must at all times also be in full compliance with attorney CLE requirements set by the Supreme Court of Ohio; with this Rule, and more generally the Rules of Practice of the Franklin County Court of Common Pleas; and with the Ohio Code of Professional Responsibility. Any failure to meet such minimum standards may result in loss of compensation, in whole or in part, for work on individual cases, and in suspension or permanent removal from the List.

#### **78.03 Inclusion on the Master Appointment List**

- A. Any attorney in good standing with the Supreme Court may apply to be included on the List provided they are current with all CLE requirements; have no pending disciplinary cases against them for which a grievance has been made public; are familiar with the Rules of Practice of the Franklin County Court of Common Pleas; and meet the qualifications for criminal appointments set by the Ohio Public Defender Commission.
- B. From time to time attorneys may seek court approval for a modification of the case types for which they may be appointed, as their experience and proficiency in criminal law and procedure develop or other circumstances dictate.
- C. Attorneys seeking to enhance their professional skills and/or achieve a higher level of court appointments may, with the approval of the trial judge, defense counsel, and the defendant, enter their appearance and participate as un-paid co-counsel in pretrial or trial proceedings before this court.

#### **78.04 The Application Process and Billings.**

- A. Forms for applying, modifying case type eligibility, and submitting billings to the court shall be as prescribed by the Executive Director.

- B.** Billings for fees and expenses submitted by appointed counsel are subject to requests for additional back-up information from the Executive Director, the Board, or the assigned trial judge. Attorneys accepting payment for appointed cases must retain their time records, expense receipts, and other back-up material for at least 24 months after an invoice is paid, in the event this court or a higher court, public auditors, or the Ohio Public Defender Commission make inquiry.

**78.05 Suspension or Removal from the List.**

- A.** Attorneys on the List are neither assured of appointments, nor that they will receive a substantially equal number of appointments as others on the List. No attorney is granted a legal right or claim by virtue of this Local Rule. If any attorney believes they are being unfairly denied appointments they shall bring the matter to the attention of the Board.
- B.** Attorneys are subject to temporary suspension or permanent removal from the List, and to potential loss of compensation in whole or in part for work performed where any of the following apply:
1. Violation(s) of this Local Rule;
  2. Persistent, unjustified refusal to accept new appointments;
  3. Failure to follow the Court's billing procedures (such as not timely completing fees reimbursement forms, or inaccurately keeping track of hours);
  4. Unprofessional behavior (such as lack of preparation, tardiness, unreasonable contentiousness with the client or opposing counsel, failure to follow through with responsibilities, and failing to treat court personnel with respect);
  5. Repeated conflicts with indigent defendants necessitating the appointment of other counsel;
  6. Excessive or improper billing, including accepting fees for initial appearance or representation of a defendant and only appearing on their behalf at arraignment and/or pretrial, resulting in requests for the appointment of publicly-paid counsel for the remainder of the case;
  7. Failing to timely conduct a conflict search;
  8. Accepting an appointment but sending other counsel to appear on behalf of the indigent defendant without good cause and prior approval of the trial judge;

9. Having a case in which they had significant responsibility reversed by an appellate court due to ineffective assistance of counsel;
  10. Seeking to withdraw, without good cause, prior to the completion of a case; and
  11. Violations of the Code of Professional Responsibility.
- C.** Any client of an attorney appointed by this court, the Ohio Public Defender Commission, or an individual judge of this court may file a written complaint with the Executive Director of this Court setting forth reasons why an appointed attorney should be suspended or removed from the List, or required to reimburse or forfeit fees. The Board shall investigate any such complaint and recommend appropriate action which may include that: (1) the matter be dismissed; (2) the attorney be permanently removed from the List; (3) the attorney remain on the List while remedial action is undertaken to correct any shortcomings, including reimbursement of or forfeiture of fees; or (4) that the attorney be suspended from the List pending remedial action. An attorney suspended from the List may seek full or partial reinstatement after completing the remedial action recommended by the Board as approved by a majority of judges of the General Division. Possible remedial action may include: the assignment of a mentor; completion of additional continuing legal education courses; reimbursement of fees improperly collected; reduction in the level of felony cases for which the attorney can receive new appointments; or participation in the Ohio Lawyers Assistance Program.
- D.** Without limitation on the foregoing, attorneys are subject to immediate suspension from the List (specifically, no new appointments) or an immediate reduction in the level and complexity of new case assignments whenever a probable cause panel of the Board of Professional Conduct of the Supreme Court of Ohio certifies a grievance and makes the charges public, pursuant to Rule V, §8(B) of the Rules for the Government of the Bar. This court's Board will conduct such investigation as it deems proper of the nature of any grievance, consider the potential impact on the rights of individual defendants and public confidence in the appointed counsel system, and promptly make a recommendation on appropriate action to all judges of the General Division. In lieu of action by the Board and the judges, an attorney may voluntarily remove themselves from the List pending final resolution of the grievance without, thereby, forfeiting their right to resume receiving appointments in the future.