

**ARKANSAS PUBLIC DEFENDER COMMISSION
MINIMUM STANDARDS**

ATTORNEY QUALIFICATIONS

Certification criteria

- (1) An attorney shall be certified for D and C felonies, misdemeanor, juvenile, guardianship, mental health cases, traffic cases punishable by incarceration and all contempt proceedings punishable by incarceration, if the attorney has requested certification and the attorney is admitted and in good standing with the state bar of Arkansas.

- (2) An attorney shall be certified for felony cases involving a felony offense bearing a maximum penalty of 30 years, if:
 - a. The attorney has requested certification;
 - b. The attorney is admitted to and in good standing with the state bar of Arkansas; and
 - c. Either, within the past 3 years:
 1. Has served one year as a prosecutor;
 2. Has served one year as a public defender;
 3. Has been trial counsel alone of record in 5 misdemeanor cases which were actually tried to conclusion;
 4. Has been trial counsel alone in 2 felony cases; or
 5. Has been trial counsel alone or with other trial counsel and handled significant portion of the trial in 2 cases, civil, criminal, or juvenile, that have been tried to a jury to final resolution.
 - d. Has continuing legal education of twelve hours in criminal law. There will be a one year grace period for persons who, within the last preceding 12 months, have taken and passed the Arkansas Bar Examination.

- (3) An attorney shall be certified for felony cases involving a Class Y felony, if, in addition to the certification requirements of complex felonies set out in the preceding section:
 - a. Meets one of these standards:
 1. The attorney's primary area of practice for the immediately preceding year has been in criminal litigation; or
 2. The attorney has had significant experience within the three preceding years in criminal litigation.
 - b. Meets all of the following standards and requirements:
 1. The attorney has been lead counsel in at least two class Y or A felonies or one class Y or A felony and one case involving a homicide which was tried to final jury verdict, or has been lead counsel in one such case and served as second chair throughout another such trial.
 2. The attorney demonstrates compliance with these requirements by submitting, for each case, the case name, date of trial, file number, name of judge, prosecutor and lead counsel, and a short description of the case and its primary issues.
 3. The attorney submits a quality writing sample, acceptable references as requested, and a satisfactory disclosure of any instances of public professional misconduct or criminal convictions.

4. The attorney receives the recommendation of the circuit judges in the judicial district in which the attorney applies.

ATTORNEY ELIGIBILITY Death cases

Number of Attorneys per case: In cases where the death penalty is sought, including a re-sentencing trial, two qualified attorneys shall be assigned to represent the defendant. Further, the appointment of the two attorneys should be made as soon as possible from the time charges are brought.

- A. Lead trial counsel assignments:
 1. Are members of the bar admitted to practice in the jurisdiction.
 2. Are experienced and active trial practitioners with at least three years litigation experience in the field of criminal defense; and
 3. Have prior experience as lead counsel in no fewer than five jury trials of serious and complex cases where tried to completion, as well as prior experience as lead counsel or co-counsel in at least one case in which the death penalty was sought. The attorney should have been lead counsel in at least two cases in which the charge was murder or capital murder; or alternatively, at least one was a murder or capital murder trial and an additional two others were felony jury trials; and
 4. Are familiar with the practice and procedure of the criminal courts of the jurisdiction; and
 5. Are familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; and
 6. Have attended and successfully completed within one year from the time of the promulgation of these minimum standards six hours of continuing legal education in the defense of capital cases. Further, in order to retain certification to try capital murder cases, the attorney must maintain six hours of continuing legal education in the defense of capital cases annually.
 7. Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

- B. Trial co-counsel assignments:
 1. Are members of the bar admitted to practice in the jurisdiction; and
 2. Who qualify as lead counsel under paragraph A of this standard or meet the following requirements:
 - a. are experienced and active trial practitioners with at least two years litigation experience in the field of criminal defense; and
 - b. have prior experience as lead counsel or co-counsel in no fewer than three jury trials, at least two of which were trials in which the charge was murder; or alternatively, of the three jury trials, at least one was a murder trial and one was a felony jury trial; and
 - c. are familiar with the practice and procedure of the criminal courts of the jurisdiction; and
 - d. have attended and successfully completed within one year from the

time of the promulgation of these minimum standards six hours of continuing legal education in the defense of capital cases. Further, in order to retain certification to try capital murder cases, the attorney must maintain six hours of continuing legal education in the defense of capital cases annually.

- e. have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

C. Alternate Procedures:

Appointments for lead and co-counsel assignments may also be distributed to persons with extensive trial or litigation experience, if it is clearly demonstrated to the appointing authority that competent representation will be provided. Lawyers appointed under this paragraph shall meet one or more of the following qualifications:

1. Experience in the trial of death penalty cases which does not meet the levels detailed in paragraphs A or B above;
2. Specialized post-graduate training in the defense of persons accused of capital crimes;
3. The availability of ongoing consultation support from experienced death penalty counsel.

APPEAL OF CERTIFICATION DECISIONS

- (1) The Executive Director shall notify each attorney who has submitted a certification application of the counties or county and categories for which the attorney is eligible. Upon request by that attorney, the Executive Director shall inform the attorney excluded from a particular list of the reasons for the exclusion and the manner by which the attorney may appeal the decision or reapply for certification.
- (2) An attorney may appeal the Executive Director's certification decision by mailing a letter of appeal to the Arkansas Public Defender Commission within 30 days of the notice of exclusion. The attorney shall state in the letter the certification from which the attorney has been excluded. The letter shall also state the reasons the attorney believes the exclusion was improper and provide any supporting documentation.
- (3) Upon receipt of an appeal letter, the Commission shall place the matter on the agenda of the next Commission meeting, unless the meeting is less than 10 days from the receipt of the appeal letter, in which case the matter may be scheduled for the following meeting. The Commission shall, at least 10 days prior to hearing, inform the attorney of the time and place of the board meeting at which the appeal will be considered.
- (4) The Executive Director shall transmit to the Commission and the attorney all material relied upon in reaching the certification decision, including the certification application and all written comments received.
- (5) The attorney may request that the Executive Director reproduce and submit to the board material relevant to the appeal. The hearing before the board is to be conducted in accordance with procedures as set forth in Ark. Code Ann. § 25-15-208.

- (6) The Commission may deliberate the matter in executive session. The Commission shall issue a written decision either affirming or reversing, or modifying the certification decision. The written decision shall be mailed to the attorney within 20 days of the meeting and shall be signed by the chairperson of the Commission.
- (7) The Commission's decision shall constitute findings of fact and conclusions of law within the meaning of Ark. Code Ann. § 25-15-210.

REMOVAL FROM CERTIFICATION LISTS FOR CAUSE

- (1) Any interested party, on his or her own motion, may request, in writing, that an attorney, previously certified to accept cases, be removed for cause. Upon receipt of a request, the Executive Director may suspend the attorney from certification or may refer the attorney to the Commission with a recommendation for removal.
- (2) Upon a recommendation for removal, or following the suspension of any attorney and the attorney's request for review, the Commission shall review the investigation and recommendation. Upon request of the attorney prior to its review, the Commission shall conduct a hearing at which time the attorney in question may be heard and produce evidence in defense thereof. Upon a finding of cause, the Commission may remove the attorney or confirm the suspension. The Commission shall render a decision within 60 days of the hearing.
- (3) Any attorney removed for cause may petition a circuit court for review of the decisions of the Commission pursuant to the provisions of Ark. Code Ann. § 25-15-212.
- (4) The Commission may, in its discretion, appoint any number of its members to conduct the hearing and to report the findings and recommendations to the entire Commission for its decision.

VOLUNTARY REMOVAL

Any attorney may request to be removed from any certified list for a specified period of time, and the Executive Director shall remove the attorney until notified in writing by the attorney that the attorney wishes to be placed back on the list. If an attorney is inactive for more than three (3) years, the attorney shall reapply for certification.

ACCESS TO FILES

- (1) The Executive Director may not disclose to any person except the subject, any comments made by any person who has initiated or responded to an inquiry relating to the fitness of an attorney for certification, unless ordered to do so by the Commission or by a court.
- (2) Only certified lists, Commission proceedings, and decisions under these rules shall be considered public documents and open to public inspection.

**ARKANSAS PUBLIC DEFENDER COMMISSION
COUNSEL CERTIFICATION APPLICATION**

Name _____ Social Security No. _____

Office Address (include city, state, zip) _____

County _____

Office Phone _____ Fax No. _____ Email address _____

Home Address (include city, state, zip) _____

County _____

Home Phone _____ Cell Phone _____

Arkansas Bar Number _____

Counties where you will accept appointment _____

Judicial District(s) in which you will accept appointment _____

1. EDUCATION

Law School _____ Date _____

Date of admission to practice in Arkansas _____

Other state where licensed and dates of admission to practice _____

Are you disbarred or suspended, or have you surrendered a license to practice in this State? _____

Have you ever been disbarred, censured, cautioned, reprimanded, or had your license suspended?
_____. If yes, please explain and attach the relevant documentation. _____

2. TYPES OF CERTIFICATION REQUESTED

_____ D and C felonies, misdemeanor, juvenile, guardianship, mental health cases, traffic cases punishable by incarceration, and all contempt proceedings punishable by incarceration.

_____ Felony offense bearing a maximum penalty of 30 years.

_____ Class Y felonies involving a possible punishment of 10 years to 40 years to life imprisonment.

_____ Lead counsel in a death case. (A separate certification application must be completed)

_____ Co-counsel in a death case. (A separate certification application must be completed)

3. EXPERIENCE

Have you ever served as _____ Dates of service: _____

(Assistant) Public Defender _____

(Assistant) District Attorney _____

(Assistant) Attorney General _____

(Assistant) U.S. Attorney _____

Are you employed or retained by any municipal, county, state, or federal government or agency?
_____. If yes, specify. _____

In the immediately preceding year, what has been your primary are of practice?

_____ Criminal law _____ Civil law _____ Other

Number of misdemeanor cases tried to final resolution as sole counsel _____

Number of felony cases brought to final resolution as sole counsel _____

Number of jury trials as sole counsel (civil, criminal, or juvenile, please specify) _____

