

## **RULE 78 – APPOINTED COUNSEL REVIEW BOARD**

**78.01 (10-18-02) Appointed Counsel Review Board.** There is hereby created an Appointed Counsel Review Board. The members of the Appointed Counsel Review Board shall include the Presiding Judge, the Administrative Judge, and the Chairman of the Rules Committee. If the Presiding Judge is not a member of the General Division of the Common Pleas Court, the Senior Judge from the General Division shall serve in lieu of the Presiding Judge. The duties and responsibilities of the Appointed Counsel Review Board shall be:

- A. To set and to publish standards for the appointment of private counsel to represent indigent defendants in criminal cases;
- B. To create a Master Appointment List from which private counsel shall be selected to represent indigent defendants in criminal cases;
- C. To approve an application form and process to be used by private counsel seeking to be listed on the Master Appointment List;
- D. To approve applications from private counsel for listing on the Master Appointment List;
- E. To evaluate the performance of private counsel representing indigent defendants in criminal cases against the standards set forth in paragraph A of this rule;
- F. To remove private counsel from the Master Appointment List;
- G. To require private counsel, when appropriate, to undertake remedial action in order to remain on the Master Appointment List; AND
- H. To require private counsel to undertake appropriate continuing legal education.

**78.02 Adoption or Amendment of Standards.** The adoption of or amendment of the standards for the appointment of private counsel to represent indigent defendants in criminal cases shall be approved by a majority of the judges.

**78.03 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 Master Appointment List shall be approved by a majority of the judges.

**78.04 Adoption of Regulations and Standards.** The Appointed Counsel Review Board adopts and incorporates by reference the Qualification, Regulations and Standards of the Ohio Public Defender's Commission.

**78.05 Inclusion on the Master Appointment List.** Any attorney in good standing with the Ohio Supreme Court may apply to be included on the Master Appointment List. The Master Appointment List is a list of private counsel qualified to represent indigent defendants in criminal cases before the Franklin County Common Pleas Court, General Division. In order to be considered for inclusion on the Master Appointment List, private counsel shall submit four copies of the following documents to the Executive Director for review by the Appointed Counsel Review Board.

- A. a completed application form approved and provided by the Court and signed by the applicant and the applicant's mentor;
- B. a current resume;
- C. verification that the applicant has attended the Common Pleas Court four-hour orientation program for new attorneys;
- D. verification that the applicant has complied with all of the continuing education requirements of the Ohio Supreme Court;
- E. a listing of criminal cases handled in either the Franklin County Municipal Court or the Common Pleas Court including:
  - (1) case name and number;
  - (2) degree of misdemeanor or felony charged;
  - (3) whether the case was disposed of with a plea or by jury trial; and
  - (4) the name of the assigned judge.

**78.06 (10-18-02) - Mentors.** Each applicant for inclusion on the Master Appointment List must have a designated mentor. The mentor will co-sign the private counsel's application for inclusion on the Master Appointment 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 submit verification that he/she has met the following experience criteria:

- A. a substantial portion of the attorney's practice for the last five years has been devoted to the criminal practice;
- B. the attorney has tried to conclusion at least 5 felony jury trials, at least one which the defendant was charged with either a felony 1 or felony 2;
- C. at least half of the attorney's continuing education includes courses relevant to criminal defense or trial practice; and
- D. the attorney has no pending disciplinary cases either with the Columbus Bar Association or with the Disciplinary Counsel for the Ohio Supreme Court.

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 master appointment list.

**78.07 Who Should Apply for Inclusion on the Master Appointment List.** Private counsel with three or more years of criminal law experience on July 1, 2002, and who have already been approved for appointments to represent indigent defendants in criminal cases need not submit to the application process. Private counsel with fewer than three years of criminal law experience on July 1, 2002, must complete the application process in order to be included on the Master Appointment List.

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

**78.09 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.

**78.10 Grounds for Removal from the Master Appointment List.** Any private counsel may be removed from the Master Appointment List for the following conduct:

A. Failure to comply with the Code of Professional Responsibility; the Ohio Rules of Criminal Procedure; the State Public Defender Commission's "Attorney Qualifications to Represent an Indigent Client"; the Rules of Practice of the Franklin County Court of Common Pleas.

B. Refusal to accept appointments.

C. Failure to follow the Court's billing procedures such as:

- (1) refusal to complete required request for reimbursement forms;
- (2) inaccurately completing the required request for reimbursement forms;
- (3) failing to file timely request for reimbursement forms;
- (4) excess billing; and
- (5) repeated submissions seeking fees in excess of 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.

**78.11 Procedure for Removing and Attorney from the Master Appointment List.** Anyone can file a complaint against a private attorney who is listed on the Master Appointment List. The following procedure will be used to remove an attorney from the Master Appointment List.

- A. File a written complaint with the Executive Director of the Court setting forth the reasons why the subject attorney should be removed from the Master Appointment List.
- B. The Appointed Counsel Review Board shall investigate the complaint and recommend that the private attorney:
  - (1) be removed from the Master Appointment List;
  - (2) remain on the Master Appointment List; or
  - (3) be suspended from the Master Appointment 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.

**78.12 Removal from the Master Appointment List.** Any attorney removed from the Master Appointment List may apply for reinstatement after one year providing the attorney completes the application process as set forth in Local Rule 78.04.

**78.13 Remedial Action.** An attorney suspended from the Master Appointment List may seek reinstatement after completing the remedial action recommended by the judges. Possible remedial action may include: