

**PUBLIC DEFENSE SERVICES COMMISSION  
QUALIFICATION STANDARDS  
FOR COURT-APPOINTED COUNSEL TO REPRESENT  
FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

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**PUBLIC DEFENSE SERVICES COMMISSION  
QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL  
TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

The following standards are adopted by the Public Defense Services Commission pursuant to ORS 151.216(1)(f)(F).

**STANDARD I: OBJECTIVE**

The objective of these standards is to ensure the provision of competent legal representation to all financially eligible persons entitled to court-appointed counsel by state or federal constitution or statute.

**STANDARD II: ATTORNEY CASELOADS**

Attorneys appointed to represent financially eligible persons at state expense must provide competent representation to each client. Neither defender organizations nor assigned counsel shall accept caseloads that, by reason of their size or complexity, interfere with providing competent representation to each client or lead to the breach of professional obligations.

**STANDARD III: GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS**

Subject to the provisions of Standard V, the appointing authority shall appoint only those attorneys who:

1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Agree to adhere to Standard II;
3. Either:
  - A. Meet the minimum qualifications specified in Standard IV for the applicable case type; or
  - B. Possess significant experience and skill equivalent to or exceeding the minimum qualifications specified in Standard IV, and who demonstrate to the satisfaction of the Office of Public Defense Services that the attorney will provide competent representation; or
  - C. Work under the supervision of an attorney who does have the requisite qualifications and who describes to the satisfaction of the Office of Public Defense Services how they will provide oversight of attorney performance in order to ensure competent representation.

3. Have adequate support staff and regularly monitored email and telephone systems to ensure reasonable and timely personal contact between attorney and client, and between the attorney and others involved with the attorney's public defense work;
4. Have an office or other regularly available and accessible private meeting space other than at a courthouse suitable for confidential client conferences; and
5. Have read, understood and agree to observe applicable provisions of the current edition of the Oregon State Bar's Performance Standards for Counsel in Criminal, Delinquency, Dependency, Civil Commitment, and Post-Conviction Relief Cases, available at [www.osbar.org](http://www.osbar.org).

#### **STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE**

##### **1. Misdemeanor Cases, Contempt, and Misdemeanor Probation Violation Proceedings in Trial Courts**

The minimum qualifications for appointment to misdemeanor and contempt cases and misdemeanor probation violation proceedings require that an attorney:

- A. Has reviewed and is familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases; the Oregon Rules of Professional Conduct; the Criminal, Vehicle and Evidence Codes of Oregon; the criminal drug offenses, and other crimes outside the Criminal Code; the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies at least one of the following:
  - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of a public defender office, a district attorney office, or attorney in private practice in criminal cases; has undertaken such representation for at least six months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable criminal procedure and sentencing alternatives;
  - b. Has observed five complete trials of criminal cases that were tried to a jury;
  - c. Has served as counsel or co-counsel in at least two criminal cases that were tried to a jury;
  - d. Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at court appearances and client interviews in each case; or
  - e. Has served as a judicial clerk for at least six months in a court that regularly conducts criminal trials;

## **2. Lesser Felony Cases and Felony Probation Violation Proceedings in Trial Courts**

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment to lesser felony cases and felony probation violation proceedings require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 1;
- B. Has met the qualifications in Standard IV, section 1 for at least nine months;
- C. Has served as counsel or as co-counsel in two criminal cases that were tried to a jury; and
- D. In at least one felony case tried to a jury, has served as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards.

## **3. Major Felony Cases in Trial Courts**

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than murder and capital murder cases.

The minimum qualifications for appointment to major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2; and
- B. Has met the qualifications in Standard IV, section 2 for at least nine months and has had at least nine months experience representing clients in lesser felony cases.

## **4. Murder Cases in Trial Courts**

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in murder cases, not including capital murder, require that an attorney:
  - a. Meets the qualifications specified in Standard IV, section 3;
  - b. Has met the qualifications in Standard IV, section 3 for at least three years;
  - c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, expert witnesses, mental state issues, and scientific evidence; and
  - d. Has acted as lead counsel or co-counsel in at least five major felonies tried to a jury, which include at least one homicide case that was tried to a jury.

- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, and c.

**5. Capital Murder Cases in Trial Courts**

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in capital murder cases require that an attorney:
- a. Has reviewed and agrees to fulfill the current version of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, and the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases;
  - b. Meets the qualifications specified in Standard IV, section 4.A;
  - c. Has represented clients in major felony cases for at least five years;
  - d. Has acted as lead counsel or co-counsel in at least one murder case that was tried to a jury;
  - e. Has attended within the last two years at least 24 hours of specialized training on in the management, preparation, and presentation of capital cases through an established training program awarding CLE credits;
  - f. Has demonstrated to persons with direct knowledge of his or her practice:
    - (1) A commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
    - (2) Substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
    - (3) Skill in the management and conduct of complex negotiations and litigation;
    - (4) Skill in legal research, analysis, and the drafting of litigation documents;
    - (5) Skill in oral advocacy;
    - (6) Skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
    - (7) Skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
    - (8) Skill in the investigation, preparation, and presentation of mitigating evidence;

- (9) Skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and
- g. On request, can demonstrate all of the above by:
  - (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
  - (2) Written statements from those with direct knowledge of the attorney's practice, declaring that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Written statements must include at least five letters from persons in at least two of the following three groups:
    - i. Judges before whom the attorney has appeared;
    - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
    - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, c, e, f, and g.
- C. *Procedure for Establishing Equivalent Skill And Experience In Capital Murder Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney will provide competent representation in capital cases. For qualification under this paragraph, attorneys must have either:
  - a. Specialized training in the defense of persons accused of capital crimes; or
  - b. The availability of ongoing consultation support from other capital murder qualified attorney(s).
- D. *Case/load.* An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

## **6. Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts**

The minimum qualifications for appointment in civil commitment proceedings under ORS Chapters 426 and 427 require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2;

- B. Has handled at least three civil, juvenile or criminal cases in which a psychiatric or psychological expert was consulted by the attorney and the use of psychiatric or psychological evidence was discussed with the client;
- C. Has knowledge of available alternatives to institutional commitment;
- D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and developmentally disabled; and,
- E. Satisfies one of the following:
  - a. Has served as co-counsel in two civil commitment cases that have been submitted to a judge for determination; or
  - b. Has observed five civil commitment hearings that have been submitted to a judge for determination.

7. **Juvenile Cases in Trial Courts. Including Delinquency. Waiver Proceedings. Neglect. Abuse. Other Dependency Cases. Status Offenses and Termination of Parental Rights**

The minimum qualifications for appointment to juvenile cases, under ORS Chapter 419, are as follows:

- A. Juvenile Delinquency Cases in Trial Courts including status offense cases and waiver proceedings
  - a. Misdemeanor, misdemeanor probation violation, and status offense cases; Meets the qualifications for appointment to misdemeanor cases as specified in Standard IV, section 1, and satisfies at least one of the following:
    - (1) Has served as counsel or co-counsel counsel in at least two juvenile delinquency cases adjudicated after a contested hearing before a judicial officer; or
    - (2) Has observed at least five juvenile delinquency cases adjudicated after a contested hearing before a judicial officer.
  - b. Lesser felony and lesser felony probation violation cases. Lesser felony cases are defined in Standard IV, section 2:
    - (1) Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a);
    - (2) Has met the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) for at least nine months;
    - (3) Has served as counsel, co-counsel, or associate counsel in two juvenile delinquency cases adjudicated after a contested hearing before a judicial



officer;

- (4) In at least one juvenile felony case adjudicated after a contested hearing before a judicial officer has served as co-counsel or associate counsel with an attorney who has previously tried juvenile felony cases; and
  - (5) On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle lesser felony cases involving the potential for commitment to a youth correctional facility until age 25.
- c. Major felony and major felony probation violations. Major felony cases are defined in Standard IV, section 3:
- (1) Meets the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b);
  - (2) Has met the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b) for at least nine months and has had at least nine months experience representing clients in lesser felony cases; and
  - (3) On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25.
- d. Murder cases:
- (1) Meets the qualifications for appointment to murder cases in trial courts as specified in Standard IV, section 4(A); and
  - (2) Has met the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c) for at least three years.
- e. Waiver proceedings (primary counsel):
- (1) Meets the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c) and criminal major felony cases as specified by Standard IV, section 1(3). Where the underlying offense is murder the attorney must meet the qualifications for juvenile murder cases as specified in Standard IV,

section 7A(d) and criminal murder cases as required by Standard IV, section 1(4); or

- (2) Meets the qualifications for either (a) appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c), or criminal major felony cases as specified by Standard IV, section 1(3). Additionally, the attorney has served as co-counsel in one juvenile delinquency major felony case that included an adjudicated waiver hearing. Where the underlying offense is murder the attorney must meet the qualifications for either juvenile murder cases as specified in Standard IV, section 7A(d), or criminal murder cases as required by Standard IV, section 1(4); or
- (3) Upon request, can present a showing of expertise and competence in the area of juvenile and criminal trial practice by submitting at least three letters of reference from other lawyers, one of which must be a judge the attorney has appeared before. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25 as well as the potential for adult criminal court consequences.
- (4) In addition to either subsection (1), (2), or (3), the attorney must also satisfy one of the following:
  - i. Has demonstrated a skillful understanding of juvenile law, criminal law, the interplay between the two, and is able to advise the client of all outcomes and consequences of the waiver hearing;
  - ii. Has demonstrated an understanding of child and adolescent brain development;
  - iii. Has demonstrated an understanding of working with mitigators as part of the defense team; or
  - iv. Can certify participation in OPDS approved training specifically related to juvenile waiver hearing preparation and litigation.

f. Waiver proceedings (co-counsel):

- (1) Meets the qualifications for either (a) appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c), or criminal major felony cases as specified by Standard IV, section 1(3). Where the underlying offense is murder the attorney must meet the qualifications for either juvenile murder cases as specified in Standard IV, section 7A(d), or criminal murder cases as required by Standard IV, section 1(4); or
- (2) Upon request, can present a showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of

reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25 as well as the potential for adult criminal court consequences.

B. Juvenile Dependency Cases in Trial Courts

Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) or has had equivalent civil or criminal experience involving complicated child-custody issues and satisfies at least one of the following:

- a. Has served as counsel, co-counsel or associate counsel in at least two dependency cases adjudicated before a judge; or
- b. Has observed at least five dependency cases adjudicated before a judge.

C. Termination of Parental Rights Cases in Trial Courts

- a. Meets the qualifications for appointment to juvenile dependency cases as specified in Standard IV, section 7B for at least six months or has had equivalent experience, civil or criminal, involving complicated child-custody issues, and
  - (1) Has served as co-counsel or associate counsel in at least one termination of parental rights trial that resulted in an adjudication; or
  - (2) Upon request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle trials resulting in the termination of parental rights.

8. **Appeals in Misdemeanor Cases, Misdemeanor Probation Violations Proceedings, and Contempt Proceedings**

The minimum qualifications for appointment in appeals in misdemeanor cases, misdemeanor probation violation proceedings, and contempt proceedings require that an attorney:

- A. Has reviewed and is familiar with:
  - a. ORS 138.005 - 138.504, ORS 33.015 – 33.155, and ORS Chapter 19;
  - b. Oregon State Bar, Criminal Law (current edition);

- c. The Oregon Rules of Appellate Procedure;
  - d. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
- a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of an attorney in public or private practice in appeals in criminal or juvenile delinquency cases; has undertaken such representation for at least 12 months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable appellate procedure and criminal law;
  - b. Has served as counsel or co-counsel in at least two appellate cases which were briefed on the merits and argued to the court under the supervision of an attorney eligible for appointment to appellate cases under this standard;
  - c. Has observed oral argument and reviewed the appellate record in at least five appeals in criminal cases;
  - d. Has significant experience in written motion practice and arguments in state circuit court or federal district or appellate court; or
  - e. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

9. **Appeals in Lesser Felony Cases, Felony Probation Violation Proceedings, Judicial Review of Parole Cases, and Post-Conviction Relief Cases**

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment in appeals in lesser felony cases, felony probation violation proceedings, judicial review of parole cases, and post-conviction relief cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. Has reviewed and is familiar with:
  - a. ORS Chapter 144;
  - b. The Oregon Felony Sentencing Guidelines (OAR Ch 213); and
  - c. The Rules of the Board of Parole and Post-Prison Supervision (OAR 255).
- C. Meets at least one of the following criteria:
  - a. Has served as counsel in at least five appeals in criminal cases which

were briefed on the merits and argued to the court;

- b. Has significant and extensive experience in written motion practice and arguments in state circuit court or federal district or appellate court; or
- c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

#### **10. Appeals in Non-Capital Murder and Major Felony Cases**

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than capital murder cases.

The minimum qualifications for appointment in appeals in major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 9;
- B. Has served as counsel in at least 10 appeals in criminal cases which were briefed on the merits and argued to the court; and
- C. Has demonstrated proficiency in appellate advocacy in felony defense.

#### **11. Appeals in Capital Murder Cases**

The minimum qualifications for appointment in appeals in capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 10;
- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the proficiency and commitment necessary for high quality representation in capital murder cases.
- D. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- E. For co-counsel in capital murder appeals, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- F. *Alternate Procedures for Establishing Equivalent Skill And Experience in Capital Appeals.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for

appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital appeals. For qualification under this paragraph, attorneys must have either:

- a. Specialized training in the defense of persons accused of capital crimes; or
- b. The availability of ongoing consultation support from other capital murder qualified attorney(s).

**12. Appeals in Juvenile Delinquency Proceedings – Misdemeanor Equivalency**

The minimum qualifications for appointment in appeals in juvenile delinquency cases adjudicating the equivalent of misdemeanor offenses require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. Has reviewed and is familiar with:
  - a. ORS 419A.200 - 419A.211; and
  - b. Oregon State Bar, Juvenile Law, (current edition).

**13. Appeals in Juvenile Delinquency Proceedings – Felony Equivalency**

The minimum qualifications for appointment in appeals in juvenile delinquency cases adjudicating the equivalent of felony offenses require that an attorney:

Meets the qualifications specified in Standard IV, sections 10 and 12.

**14. Appeals in Juvenile Dependency and Termination of Parental Rights Proceedings**

The minimum qualifications for appointment in appeals in juvenile dependency and termination of parental rights cases require that an attorney:

- A. Has reviewed and is familiar with:
  - a. ORS Chapter 419B;
  - b. ORS Chapter 419A;
  - c. ORS Chapter 19;
  - d. The Oregon Rules of Appellate Procedure;
  - e. Oregon State Bar, Juvenile Law (current edition);

- f. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
  - a. Has served as counsel or co-counsel in at least five appeals in juvenile dependency or termination of parental rights proceedings including briefing the cases on the merits and arguing the cases to the court;
  - b. Has significant and extensive experience in written motion practice and arguments in state trial court and appellate court or in federal district court; or
  - c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience and who will attest to the quality of the attorney's work by appearing as co-counsel on all filed briefs.

**15. Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases**

The minimum qualifications for appointment in post-conviction proceedings in cases other than murder and capital murder cases require that an attorney:

- A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the post-conviction proceeding;
- B. Has reviewed and is familiar with:
  - a. The Oregon Post-Conviction Hearing Act, ORS 138.510-138.686; and
  - b. The Oregon State Bar's performance standards for counsel representing petitioners in post-conviction relief proceedings, and the authorities cited therein.
- C. Has served as co-counsel or observed proceedings and reviewed the record in at least two post-conviction relief proceedings in which a trial court entered a judgment on the petition;
- D. Has attended and completed a legal education and training program on post-conviction relief proceedings within two years prior to appointment.

**16. Post-Conviction Proceedings in Murder and Capital Murder Cases**

The minimum qualifications for appointment in post-conviction proceedings in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. Meets the qualifications specified in Standard IV, section 15;

- C. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- D. For capital murder cases, meets the qualifications specified in Standard IV, section 5 for co-counsel in capital cases in the trial courts. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 5.
- E. *Alternate Procedures Establishing Equivalent Skill And Experience in Post-Conviction Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital murder cases. For qualification under this paragraph, attorneys must either:
  - (1) Specialized training in the defense of persons accused of capital crimes; or
  - (2) The availability of ongoing consultation support from other capital murder qualified attorney(s).

## **17. Habeas Corpus Proceedings**

The minimum qualifications for appointment in habeas corpus proceedings require that an attorney meet the qualifications specified in Standard IV, section 2.

## **STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT OF COUNSEL**

### **1. Certificate and Supplemental Questionnaire**

In order to receive an appointment to represent a financially eligible person at state expense, an attorney must submit a certificate of qualification together with a completed supplemental questionnaire, and be approved by the Office of Public Defense Services for appointment to the case type for which the appointment will be made. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards, or as otherwise specified by the Office of Public Defense Services.

### **2. Submission Requirements**

- A. *Contract Attorneys.* Contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the execution of the contract and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.



- B. *Assigned Counsel (for all Non-contract Appointments)*. Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

### 3. **Supporting Documentation**

- A. An attorney must submit supporting documentation in addition to the certificate and questionnaire:
  - a. At the request of OPDS; or
  - b. When the attorney seeks to qualify for appointments based on equivalent skill and experience.
- B. Supporting documentation requested by OPDS may include, but is not limited to:
  - a. A written statement explaining why the attorney believes that he or she has the qualifications required to handle the case type(s) selected by the attorney; and
  - b. Written statements from those with direct knowledge of the attorney's practice explaining why they believe that the attorney is qualified to handle the case type(s) selected by the attorney. Written statements may include those from persons in the following three groups:
    - (1) Judges before whom the attorney has appeared;
    - (2) Defense attorneys who are recognized and respected by the local bar as experienced trial lawyers and who have knowledge of the attorney's practice; and
    - (3) District attorneys or deputies against whom or with whom the attorney has tried cases.
- C. Contract providers seeking to qualify attorneys pursuant to the Public Defense Organization provision of Standard III, section 3.C, shall submit prior to execution of its contract with OPDS and update as necessary:
  - a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;
  - b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;
  - c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 3.C, signed by an authorized representative of the

organization that states the type of cases for which the attorney is eligible to receive appointment; and

- d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 3.C, completed and signed by each attorney.

#### **4. Approval for Appointment**

- A. *Review of Submitted Certificates.* OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications for a case type will be approved for appointment to cases of that type. OPDS's goal is to select attorneys who:
  - a. Are more than minimally qualified;
  - b. Have specialized skills needed in a particular community;
  - c. Are available to cover cases in the appropriate geographic area;
  - d. Are able to meet specific needs of the court such as availability at specific times;
  - e. Are able to effectively and efficiently manage a law practice, observing appropriate fiscal and organizational practices; and
  - f. Have other qualities that would benefit the court, the clients or OPDS.

At the completion of the review, OPDS shall notify the attorney of the case types for which the attorney has been approved for appointment and the reason for its decision not to approve the attorney for appointment in any case type for which certification was submitted.

- B. *Request for Reconsideration.* An attorney who is not approved for appointment in case types for which the attorney has certified qualification may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of approval/disapproval for appointment in particular case types, additional information, including supporting documents, if any, which the attorney believes demonstrates that the attorney meets the criteria for selection set forth in Paragraph 4.A.
- C. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. OPDS shall notify the attorney of its final determination.
- D. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.
- E. *Provision of Lists to the Courts.* OPDS will prepare a list of attorneys approved for appointment for counties that routinely appoint attorneys who do not provide

public defense services pursuant to a contract with OPDS. Other courts should contact OPDS for assistance in identifying attorneys available for appointment.

F. *Updating Lists.* OPDS will update lists as necessary.

## 5. **Suspension from Appointment**

- A. *Suspension from Future Appointments.* If OPDS obtains information that calls into question an attorney's ability to provide adequate assistance of counsel, OPDS shall notify the attorney of the information and shall perform such investigation as is necessary to determine whether the attorney is able to provide adequate assistance of counsel. After completing its investigation and reviewing any information provided by the attorney OPDS shall have authority to suspend the attorney from future appointments for any or all case types until OPDS is satisfied that the attorney is able to provide adequate assistance of counsel. When OPDS suspends an attorney from future appointments OPDS shall notify the attorney and the court of the suspension and the reason(s) for the suspension.
- B. *Suspension from Current Appointments.* The court, after reviewing the reason(s) for the suspension, shall consider whether the attorney should be relieved as counsel in any pending court-appointed cases. The court shall consider with respect to each open case: the reason for the suspension, the needs of the client, and the ability of the attorney to provide adequate assistance of counsel under all of the circumstances. The court shall comply with the Paragraph 1.7 of OPDS's Public Defense Payment Policies and Procedures relating to substitution of counsel.
- C. *Request for Reconsideration.* An attorney who is suspended from future appointments may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of suspension, additional information, including supporting documents, if any, which the attorney believes establish the attorney's ability to provide adequate assistance of counsel.
- D. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration, the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. In reviewing the request, the executive director or the executive director's designee may select and empanel a group of public defense attorneys to advise the executive director about the attorney's ability to provide adequate assistance of counsel and whether the attorney should be suspended from future appointment for any or all case types. OPDS shall notify the attorney and the court of its final determination and the reasons for its final determination.
- E. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.