

1 **Rule 8. Appointment of Counsel**

2 (a) **Right to counsel** A defendant charged with a public offense has the right to self-
3 representation the penalty for which includes the possibility of incarceration, regardless
4 of whether actually imposed, has the right to counsel, and if indigent, has the right to
5 court-appointed counsel if the defendant faces any possibility of the deprivation of
6 liberty.

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
9 death, the court ~~shall~~ will appoint two or more attorneys to represent ~~such~~ the defendant
10 and ~~shall~~ will make a finding on the record ~~based on the requirements set forth below~~
11 that appointed counsel is competent in the trial of capital cases. ~~In making its~~
12 ~~determination, the court shall ensure that the experience of counsel who are under~~
13 ~~consideration for appointment have met the following minimum requirements~~ To be
14 found competent to represent a defendant charged in a capital case, the combined
15 experience of the appointed attorneys must meet the following requirements:

16 ~~(b)~~(1) at least one of the appointed attorneys must have tried to verdict at least six
17 felony cases as defense counsel within the past four years or ~~twenty-five~~ 25 felony
18 cases total, with at least six of the 25 felony cases as defense counsel;

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

22 ~~(b)~~(3) within the last five years, at least one of the appointed attorneys must have
23 completed or taught, in person, ~~within the past five years an~~ at least eight hours
24 of approved continuing legal education ~~course or courses at least eight hours of~~
25 which dealt, in substantial part, with the ~~trial~~ representation of defendants in
26 death penalty cases; and

27 ~~(b)~~(4) at least one of the appointed attorneys must have at least ~~the experience of~~
28 ~~one of the appointed attorneys must total not less than~~ five years of experience in
29 the active practice of law.

30 (c) **Capital case appointment considerations.** In making its selection of attorneys for a
31 appointment in a capital case, the court ~~should~~ will also consider at least the following
32 factors:

33 ~~(e)~~(1) whether one or more of the attorneys under consideration have previously
34 appeared as defense counsel or defense co-counsel in a capital case;

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

39 ~~(e)~~(3) the extent to which the attorneys under consideration have engaged in the
40 active practice of criminal law in the past five years;

41 ~~(e)~~(4) the diligence, competency, the total workload, and ability of the attorneys
42 being considered; and

43 ~~(e)~~(5) any other factor which may be relevant to a determination that counsel to be
44 appointed will fairly, efficiently, and effectively provide representation to the
45 defendant.

46 (d) **Capital case appeals.** In all cases where an indigent defendant is sentenced to death,
47 the court ~~shall~~ will appoint one or more attorneys to represent such defendant on appeal
48 and ~~shall~~ will make a finding that counsel is competent in the appeal of capital cases. To
49 be found competent to represent on appeal ~~persons~~ a person sentenced to death, the
50 combined experience of the appointed attorneys must meet the following requirements:

51 ~~(d)~~(1) at least one attorney must have served as counsel in at least three felony
52 appeals; and

53 ~~(d)~~(2) within the last five years, at least one attorney must have attended and
54 completed ~~within the past five years~~ an approved continuing legal education
55 course which ~~deals~~ dealt, in substantial part, with the trial or appeal of death
56 penalty cases.

57 (e) **Post-conviction cases.** In all cases in which counsel is appointed to represent an
58 indigent petitioner pursuant to Utah Code § section 78B-9-202~~(2)~~(a), the court ~~shall~~ will
59 appoint one or more attorneys to represent such petitioner at post-conviction trial and on
60 post-conviction appeal and ~~shall~~ will make a finding that counsel is qualified to represent
61 persons sentenced to death in post-conviction cases. To be found qualified, the combined
62 experience of the appointed attorneys must meet the following requirements:

63 ~~(e)~~(1) at least one of the appointed attorneys must have served as counsel in at least
64 three felony or post-conviction appeals;

65 ~~(e)~~(2) at least one of the appointed attorneys must have appeared as counsel or co-
66 counsel in a post-conviction case at the evidentiary hearing, on appeal, or
67 otherwise demonstrated proficiency in the area of post-conviction litigation;

68 ~~(e)~~(3) within the last five years at least one of the appointed attorneys must have
69 attended and completed or taught ~~within the past five years~~ an approved
70 continuing legal education course which dealt, in substantial part, with the trial
71 and appeal of death penalty cases or with the prosecution or defense of post-
72 conviction proceedings in death penalty cases;

73 ~~(e)~~(4) at least one of the appointed attorneys must have tried to judgment or verdict
74 three civil jury or felony cases within the past four years or ten cases total; and

75 ~~(e)~~(5) the experience of at least one of the appointed attorneys must total not less
76 than five years in the active practice of law.

77 (f) **Appointing from appellate roster.** When appointing counsel for an indigent
78 defendant on appeal from a court of record, the court ~~must~~ will select an attorney from

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

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

84 (h) **Litigation expenses and attorney fees.**

85 ~~(h)~~(1) ~~Cost~~ Litigation expenses and attorneys' fees for appointed counsel ~~shall~~ will
86 be paid as described in Chapter 22 of Title 78B.

87 ~~(h)~~(2) ~~Cost~~ Litigation expenses and attorneys' fees for post-conviction counsel ~~shall~~
88 will be paid pursuant to Utah Code § section 78B-9-202(2)(a).

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90 *Effective November 1, 2024*