

1 **Rule 8. Appointment of counsel.**

2 (a) A defendant charged with a public offense has the right to self representation, and if indigent,  
3 has the right to court-appointed counsel if the defendant faces a ~~substantial probability~~ any  
4 possibility of the deprivation of liberty.

5 (b) In all cases in which counsel is appointed to represent an indigent defendant who is charged  
6 with an offense for which the punishment may be death, the court shall appoint two or more  
7 attorneys to represent such defendant and shall make a finding on the record based on the  
8 requirements set forth below that appointed counsel is ~~proficient~~ competent in the trial of capital  
9 cases. In making its determination, the court shall ensure that the experience of counsel who are  
10 under consideration for appointment have met the following minimum requirements:

11 (b)(1) at least one of the appointed attorneys must have tried to verdict six felony cases within the  
12 past four years or twenty-five felony cases total;

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

15 (b)(3) at least one of the appointed attorneys must have completed or taught within the past five  
16 years an approved continuing legal education course or courses at least eight hours of which deal,  
17 in substantial part, with the trial of death penalty cases; and

18 (b)(4) the experience of one of the appointed attorneys must total not less than five years in the  
19 active practice of law.

20 (c) In making its selection of attorneys for appointment in a capital case, the court should also  
21 consider at least the following factors:

22 (c)(1) whether one or more of the attorneys under consideration have previously appeared as  
23 counsel or co-counsel in a capital case;

24 (c)(2) the extent to which the attorneys under consideration have sufficient time and support and  
25 can dedicate those resources to the representation of the defendant in the capital case now pending  
26 before the court with undivided loyalty to the defendant;

27 (c)(3) the extent to which the attorneys under consideration have engaged in the active practice of  
28 criminal law in the past five years;

29 (c)(4) the diligence, competency, the total workload, and ability of the attorneys being considered;  
30 and

31 (c)(5) any other factor which may be relevant to a determination that counsel to be appointed will  
32 fairly, efficiently and effectively provide representation to the defendant.

33 (d) In all cases where an indigent defendant is sentenced to death, the court shall appoint one or  
34 more attorneys to represent such defendant on appeal and shall make a finding that counsel is  
35 ~~proficient~~ competent in the appeal of capital cases. To be found ~~proficient~~ competent to represent on  
36 appeal persons sentenced to death, the combined experience of the appointed attorneys must meet  
37 the following requirements:

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

39 (d)(2) at least one attorney must have attended and completed within the past five years an  
40 approved continuing legal education course which deals, in substantial part, with the trial or appeal  
41 of death penalty cases.

42 (e) In all cases in which counsel is appointed to represent an indigent petitioner pursuant to Utah  
43 Code ~~Ann. Section~~ § 78B-9-202(2)(a), the court shall appoint one or more attorneys to represent  
44 such petitioner at post-conviction trial and on post-conviction appeal and shall make a finding that  
45 counsel is qualified to represent persons sentenced to death in post-conviction cases. To be found  
46 qualified, the combined experience of the appointed attorneys must meet the following  
47 requirements:

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

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

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

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

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

61 (f) When appointing counsel for an indigent defendant on appeal from a court of record, the court  
62 must select an attorney from the appellate roster maintained by the Board of Appellate Judges  
63 under rule 11-401 of the Utah Rules of Judicial Administration.

64 ~~(f)~~(g) Mere noncompliance with this rule or failure to follow the guidelines set forth in this rule  
65 shall not of itself be grounds for establishing that appointed counsel ineffectively represented the  
66 defendant at trial or on appeal.

67 ~~(g)~~(h) Cost and attorneys' fees for appointed counsel shall be paid as described in Chapter 32 of  
68 Title 77.

69 ~~(h)~~(i) Costs and attorneys fees for post-conviction counsel shall be paid pursuant to Utah Code  
70 ~~Ann. Section~~ § 78B-9-202(2)(a).