

1 (a) ~~Right to counsel~~ Representation.

2 (1) A defendant charged with any ~~public~~ offense has the right to be represented  
3 by counsel at all stages of the prosecution. ~~self-representation the penalty for~~  
4 ~~which includes the possibility of incarceration, regardless of whether actually~~  
5 ~~imposed, has the right to counsel, and if~~

6 (2) An indigent; defendant charged with a misdemeanor or felony has the right to  
7 court-appointed counsel ~~if the defendant faces any possibility of the deprivation~~  
8 ~~of liberty.~~

9 (3) A defendant has the right to self-representation if the defendant waives the  
10 right to counsel as described in paragraph (c).

11 (b) Appointment. Except in circumstances provided in paragraphs (d), (e), (f), and (g), or  
12 when the defendant waives representation as described in paragraph (c), if the trial court  
13 finds the defendant is indigent pursuant to Utah Code section 78B-22-202, the court will  
14 appoint an indigent defense service provider according to Utah Code section 78B-22-203.

15 (c) Waiver of counsel.

16 (1) Prior to accepting a waiver of the right to counsel, the court will engage in a  
17 colloquy with the defendant to ensure that such waiver is knowing, intelligent,  
18 and voluntary. The court will:

19 (A) inform the defendant of the dangers, disadvantages, and consequences  
20 of self-representation;

21 (B) discuss the defendant's specific understanding:

22 (i) of the nature of the charges and the range of potential penalties;

23 (ii) that the case is subject to the Rules of Criminal Procedure and the  
24 Rules of Evidence;

25 (iii)that the elements of the charged crime(s) are governed by the laws  
26 and ordinances of the State of Utah and its political subdivisions; and

27 (iv)that there may be legal defenses governed by the laws of the United  
28 States, the State of Utah, and Utah’s political subdivisions;

29 (C) determine whether the defendant is indigent pursuant to Utah Code  
30 section 78B-22-202.

31 (i)If the court determines the defendant is indigent, the court:

32 1.will offer the defendant the opportunity to have counsel  
33 appointed; and

34 2.may appoint counsel for the limited purpose of consulting with  
35 the defendant regarding the waiver of counsel.

36 (2) As part of its colloquy, the court may inquire as to the defendant’s literacy,  
37 educational background, and legal training to assess the defendant’s  
38 understanding of the consequences of waiver.

39 (3) A defendant may revoke the waiver of counsel and either retain counsel or seek  
40 the appointment of counsel.

41 **(bd) Capital case qualifications.** In all cases in which counsel is appointed to represent  
42 an indigent defendant who is charged with an offense for which the punishment may be  
43 death, the court ~~shall~~ will appoint two or more attorneys to represent ~~such~~ the defendant  
44 and ~~shall~~ will make a finding on the record ~~based on the requirements set forth below~~  
45 that appointed counsel is competent in the trial of capital cases. ~~In making its~~  
46 ~~determination, the court shall ensure that the experience of counsel who are under~~  
47 ~~consideration for appointment have met the following minimum requirements~~ To be  
48 found competent to represent a defendant charged in a capital case, the combined  
49 experience of the appointed attorneys must meet the following requirements:

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

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

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

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

63 ~~(e)~~ **Capital case appointment considerations.** In making its selection of attorneys for ~~a~~  
64 appointment in a capital case, the court ~~should~~ will also consider at least the following  
65 factors:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 ~~(f)~~**(h)** **Appointing from appellate roster.** When appointing counsel for an indigent  
111 defendant on appeal from a court of record, the court ~~must~~will select an attorney from  
112 the appellate roster maintained by the Board of Appellate Judges under rule 11-401 of the  
113 Utah Rules of Judicial Administration, subject to any exemptions established by that rule.

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

117 **(j) Litigation expenses and attorney fees.**

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

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