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SECOND REPORT OF THE  
COMMITTEE ON THE APPOINTMENT OF COUNSEL  
FOR INDIGENT DEFENDANTS IN CAPITAL CASES

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Judge Everett Burton  
Chair

April 1993

# THE SUPREME COURT OF OHIO

Chief Justice Thomas J. Moyer

Justice A. William Sweeney

Justice Andy Douglas

Justice Craig Wright

Justice Alice Robie Resnick

Justice Francis E. Sweeney

Justice Paul E. Pfeifer

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# The Supreme Court of Ohio

30 EAST BROAD STREET, COLUMBUS, OHIO 43266-0419

COMMITTEE ON THE  
APPOINTMENT OF COUNSEL FOR  
INDIGENT DEFENDANTS IN  
CAPITAL CASES

April 1, 1993

(614) 466-1551  
1-800-826-9010 (IN OHIO)

Chief Justice Thomas J. Moyer  
Supreme Court of Ohio  
30 East Broad Street  
Columbus, Ohio 43266-0419

Dear Chief Justice Moyer:

Enclosed is the second report of the Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases. Although not required by Common Pleas Superintendence Rule 65 to formally report to the Court, the Committee believes it is important to periodically advise the Court, the bench, and the bar of its activities.

Our initial report issued July 1990 covered the period from the Committee's inception in 1987. This second report details the work of the Committee since July 1990. As with the initial report, this second report will be distributed to each common pleas court judge in Ohio.

On behalf of the Committee, we appreciate your continued support of our efforts.

Yours truly,



Judge Everett Burton  
Chair, Committee on the Appointment  
of Counsel for Indigent Defendants  
in Capital Cases

Enclosure

**COMMITTEE ON THE APPOINTMENT OF COUNSEL  
FOR INDIGENT DEFENDANTS IN CAPITAL CASES**

**The Honorable Everett Burton**  
Chairman  
Scioto County Common Pleas Court  
Portsmouth

Supreme Court appointee  
Term expires 12/31/97

**William F. Kluge**  
Lima

Supreme Court appointee  
Term expires 12/15/94

**Max Kravitz**  
Professor of Law  
Capital University Law and  
Graduate Center  
Columbus

Supreme Court appointee  
Term expires 12/15/93

**John S. Pyle**  
Gold, Rotatori, Schwartz  
and Gibbons Co., LPA  
Cleveland

Ohio State Bar  
Association appointee  
Term expires 12/15/96

**Joann Bour-Stokes**  
Interim Supervisor  
Death Penalty Section  
Office of the Ohio Public Defender  
Columbus

Ohio Public Defender  
Commission appointee  
Term expires 12/15/95

Staff Liaison

**Keith Bartlett**  
Assistant Administrative Director  
Supreme Court of Ohio  
Columbus

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## **I. INTRODUCTION**

The Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases was formed in 1987 shortly after the Supreme Court adopted Rule 65 of the Supreme Court Rules of Superintendence for Courts of Common Pleas. The Committee is commonly known as the Rule 65 Committee.

The Committee previously reported to the Supreme Court in July 1990, and decided that it should formally report to the Court every two to three years.

This report is intended to update the Court on the operation of Rule 65 and provide the bench, bar, and public with current information concerning Rule 65 and the operation of the Committee.

## **II. HISTORY OF SUPERINTENDENCE RULE 65**

Rule 65 was adopted by the Supreme Court of Ohio effective October 1, 1987. It had been proposed by a specially appointed subcommittee of the Criminal Justice Committee of the Ohio State Bar Association comprised of attorneys from around the state who had a special knowledge of the prosecution and defense of death penalty cases. The Supreme Court, the Criminal Justice Committee, and the special subcommittee were concerned that inexperienced and under-compensated attorneys often were not providing effective representation in capital cases.

As originally drafted, Rule 65 sought to impose specific experiential requirements on attorneys seeking appointments in capital cases. The subcommittee also decided that specialized training in the defense of capital cases should be required. The basic experiential and training requirements were contained in the rule that subsequently was approved by the Criminal Justice Committee, the Executive Committee, and the Council of Delegates of the Ohio State Bar Association, and eventually by the Supreme Court. Both the experiential and specialized training requirements have been revised over the years by amendments to Rule 65, but they remain the core of the rule.

In announcing the adoption of the rule, Chief Justice Thomas J. Moyer said: "Ohio is the first state in the nation to adopt a mandatory rule establishing standards for the appointment of counsel for indigents in death penalty cases. This demonstrates the Supreme Court's commitment to maintaining and enhancing the skills of lawyers who represent indigent clients in capital cases." Since that time, Rule 65 has served as a model for the consideration of such standards throughout the country.

### III. REVISED QUALIFICATIONS OF COUNSEL UNDER RULE 65

Shortly after issuing its first report in July 1990, the Committee recommended to the Court that Rule 65 be amended. The recommendations were adopted by the Supreme Court effective January 1, 1991. The amendments were designed to ensure that only truly experienced and qualified counsel would be certified as eligible to be court-appointed counsel for indigent defendants in capital cases. The first two years of the operation of the rule had demonstrated to the Committee that the qualifications needed to be made more strict and that the language of the rule needed to be clarified and made more concise. Thus, the Committee recommended changes to the rule that reflected these concerns.

The rule still requires the trial court to appoint two attorneys, both of whom must meet the requirements of Rule 65, to provide representation in every capital prosecution where the accused is determined to be indigent. At least one of the appointed attorneys must maintain an office in Ohio and have experience in Ohio criminal trial practice. The appointed attorneys are designated lead counsel and co-counsel.

#### A. Lead Counsel

In order to be considered for appointment as lead counsel, an attorney must meet all of the following requirements:

- a. Be admitted to the Ohio Bar or admitted to practice pro hac vice;
- b. Have at least three years of litigation experience, criminal or civil;

- c. Have specialized training, as defined by the Committee, in the defense of persons accused of capital crimes;
- d. Have at least one of the following qualifications:
  - i. Experience as "lead counsel" in the jury trial of at least one capital case;
  - ii. Experience as "co-counsel" in the trial of at least two capital cases;
- e. Have at least one of the following qualifications:
  - i. Experience as "lead counsel" in the jury trial of at least one murder or aggravated murder case;
  - ii. Experience as "lead counsel" in ten or more criminal or civil jury trials at least three of which were felony jury trials;
  - iii. Experience as "lead counsel" in at least one of the following:
    - Three murder or aggravated murder trials;
    - One murder or aggravated murder jury trial and three felony jury trials;
    - Three aggravated or first- or second-degree felony jury trials in a common pleas court within the past three years, at least one of which involved a charge of a violent crime.

The previous requirement that attorneys receive "some specialized training in the defense of persons accused of capital crimes" was changed to: "Have specialized training in the defense of persons accused of capital crimes as defined by the Committee." This change allows the Committee to determine the amount of specialized training that is required and permits the Committee to make this determination in the future without having to return to the Court for approval. The Committee, with the Court's approval, previously had determined that twelve hours of specialized training every two years would meet this requirement, and that remains the requirement today. The Committee, also with the Court's approval, previously had defined the procedures for attorneys to obtain credit for specialized training and for sponsoring organizations to obtain accreditation. Those regulations remain in effect and are attached as Appendix C.

Divisions I(A)(2)(d) and (e) of the rule were rewritten for clarification and to ensure that only experienced capital trial attorneys were being appointed to serve as lead counsel in capital cases. The rule requires lead counsel to have prior experience as lead counsel in the jury trial of a capital case or prior experience as co-counsel in two jury trials of capital cases. The Committee believed that Rule 65 had been in operation sufficiently long that there was a large enough pool of attorneys experienced in trying capital cases to provide lead counsel for all of the capital cases that are indicted each year.

In addition to having experience as lead counsel in the jury trial of at least one capital case or as co-counsel in the trials of at least two capital cases, the Committee recommended that counsel also have experience in the trial of serious felonies, including non-capital murders. Thus, the experience factors, which alone could previously have qualified an attorney for lead counsel, are now required in addition to prior experience in the trial of capital cases.

**B. Co-Counsel**

The Committee also proposed, and the Court adopted, additional requirements for certification as trial co-counsel. The attorney must meet all of the following requirements:

- a. Be admitted to the Ohio Bar or be admitted to practice pro hac vice;
- b. Be admitted to the practice of law for at least three years;
- c. Have specialized training, as defined by the Committee, in the defense of persons accused of capital crimes;
- d. Have at least one of the following qualifications:
  - i. Experience as "co-counsel" in one murder or aggravated murder trial;
  - ii. Experience as "lead counsel" in one first-degree felony jury trial;
  - iii. Experience as "lead" or "co-counsel" in at least two felony jury or civil jury trials in common pleas court.

The Committee was concerned about the number of attorneys who previously had been certified as co-counsel and who were inexperienced or otherwise marginally qualified. In order to address that problem, the Committee recommended that admission to the practice of law for at least three years should be required for certification as trial co-counsel. The exceptional young attorney who acquired the necessary skills and training with less than three years experience could apply under the "exceptional circumstances" exception to the rule.

The other significant change was to make "specialized training in the defense of persons accused of capital crimes as defined by the Committee" a qualification for co-counsel as well as lead counsel. By regulation, the Committee had required at least twelve hours of training every two years for all certified counsel. This amendment reflects that regulation and makes specialized training in capital cases a requirement rather than an alternative qualifier for co-counsel.

### C. Appellate Counsel

The Committee also recommended changes in the requirements necessary for certification as appellate counsel. In any case where the death penalty is imposed, two certified attorneys must be appointed for the appeal. Both counsel must have sufficient experience in criminal appeals, post-conviction, or federal habeas corpus cases to appreciate the complexities of capital appeals. At least one of the attorneys must maintain an office in Ohio. In addition, appellate counsel must meet all of the following qualifications:

- a. Be admitted to the Ohio Bar or be admitted pro hac vice;
- b. Have at least three years litigation experience, criminal or civil;
- c. Have specialized training, as defined by the Committee, in the defense of persons accused of capital crimes or in the appeal of cases in which the death penalty was the sentence;
- d. Have experience as counsel in the appeal of at least three felony convictions within the last three years.

The Committee recommended that the Court eliminate the previous qualifier that the attorney have experience in a previous appeal where the death penalty had been imposed. The Committee believed that the fact that an attorney had done a previous capital appeal should not necessarily qualify that attorney to continue receiving appointments to do capital appeals. Specialized training also was added as a requirement rather than an alternative qualifier as previously had been the case.

**D. Exceptional Circumstances**

Under Sections (I)(A)(4) and (B)(3), attorneys who do not meet all of the requirements of the rule may petition the Committee to demonstrate that they have the experience and training to provide competent representation to the accused. The Committee receives numerous requests every year for certification under this provision. The factors that the Committee must consider when determining whether exceptional circumstances exist for trial counsel are:

- a. Experience in the trial of criminal cases;
- b. Specialized post-graduate training in jury trials;
- c. Specialized training in the defense of persons accused of capital crimes;
- d. Any other relevant considerations.

The factors that the Committee must consider for appellate counsel are:

- a. Specialized training in the trial or appeal of cases in which the death penalty may be imposed;
- b. Experience in the trial or appeal of criminal or civil cases;
- c. Any other relevant considerations.

**E. Savings Clause**

The Committee also proposed to "grandfather" attorneys onto the list of certified counsel who were certified prior to the amendment, but would not meet the new experiential requirements of the amended rule. This provision was added primarily to

address concerns in some rural counties where there are very few jury trials and capital cases, and, consequently, very few opportunities to gain the required experience. Without this provision, the Committee feared that the pool of attorneys on the statewide list would be too small to meet the needs of the rural counties; the provision was adopted as division C of section I.

Because of the number of attorneys who are certified and placed on the statewide list of approved counsel, appointing courts must have good cause to appoint attorneys who do not meet the requirements of Rule 65.

The Committee is reviewing additional proposed amendments to Rule 65 to be submitted to the Court in 1993.

#### **IV. OTHER PROVISIONS OF RULE 65**

##### **A. Monitoring and Removal**

The Committee also recommended and the Court adopted a new Section IV on Monitoring and Removal. This section requires the appointing court to monitor the performance of counsel, since the appointing court is in the best position to observe the attorney's preparation and performance. When an attorney fails to perform effectively in a capital case and the client is prejudiced thereby, the attorney should no longer be permitted to accept additional appointments in these cases. This new section requires the appointing court to discontinue appointments to the attorney and to report failures of representation to the Committee, which shall give the attorney an opportunity to be heard.

Section IV(A) was modeled after and is nearly identical to Guideline 7.1 of the American Bar Association Guidelines for the Appointment and Performance of Counsel in Capital Cases adopted in February 1989. The monitoring function of the appointing court is not one of advising or interfering with counsel's ability to make professional decisions and represent the client to the best of his or her ability. This section, however, does require the appointing court to take action on those occasions where counsel's failure to perform effectively may have prejudiced the client.

The Committee has not received a complaint from an appointing court since the amendment to the rule. However, the Committee previously had received complaints from interested parties but had no authority to investigate or rescind an attorney's Rule 65 certification.

Division B of section IV establishes a procedure for the Committee to receive and investigate complaints about the performance of counsel. This provides a mechanism where a complaint can be registered with the Committee claiming that an attorney "ignored basic responsibilities of an effective lawyer" and that the client was prejudiced by the lawyers's conduct. This division requires the Committee to investigate and, if appropriate, remove the attorney from the list of certified counsel pursuant to its authority under Section II (G)(5) of the rule.

**B. Specialized Training**

In 1988, the Committee, with the Court's approval, adopted standards for specialized training in the defense of capital cases. These standards remain in effect. They are independent of, and in addition to, the continuing legal education requirements for all attorneys pursuant to Rule X of the Rules for the Government of the Bar of Ohio. Since 1989, various organizations and individuals have sponsored death penalty training seminars. These seminars have generally been held twice each year and have rotated between Cleveland, Cincinnati, and Columbus in order to attract attorneys from around the state. Each seminar attracts 150 to 200 attorneys for two days of intensive training.

Under the Standards for Retention on Appointed Counsel Lists, every certified attorney must obtain twelve hours of specialized training every two years to remain on the statewide list. The twelve hours must be obtained from one of the pre-approved seminars or must be specifically approved by the Committee. Each year the Committee receives requests for approval of out-of-state or national death penalty training seminars. These requests are reviewed individually and approved where the seminar provides the same type of training required by the Committee's standards.

**C. Denial of Reimbursement**

If an attorney who is not certified under Rule 65 or who has not received prior approval from the Committee under the exceptional circumstances exception is appointed to represent an indigent defendant charged with or convicted of a capital offense, the Ohio Public Defender Commission may deny reimbursement to the county for all of the fees and expenses of the case. The Commission's rule, promulgated in 1988, appears as Appendix D.

**D. Reporting Forms**

Subsequent to the adoption of the 1991 amendments to the rule, the Committee proposed new forms for attorneys to use when applying for certification, and for the trial and appellate courts to report appointments of counsel and the disposition of cases. These forms more closely tracked the amendments to the rule and were designed to make reporting easier for the trial and appellate judges. Judicial compliance with appointing and reporting requirements of Rule 65 continues to be high; see Appendix L.

**V. THE COMMITTEE ON THE APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN CAPITAL CASES.**

Rule 65 is administered by the Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases. Three of the five members are appointed by a majority vote of the Supreme Court of Ohio; one is appointed by the Ohio State Bar Association; and one is appointed by the Ohio Public Defender Commission.

To be eligible for appointment to the Committee, a member must satisfy all of the following requirements:

- A. Be a member of the Bar of Ohio;
- B. Have represented criminal defendants for at least five years;
- C. Demonstrate a knowledge of the law and practice in death penalty cases;
- D. Not be an employee of any court, or currently be a prosecuting attorney or similar officer, or their assistant or employee.

No more than three members of the Committee shall be members of the same political party, no more than two members can reside in the same county, and no more than one member can be a judge. After initial staggered appointments of one through five years, members are appointed to five year terms.

The initial appointments were made in December 1987. John J. Callahan, a private practitioner from Toledo, was appointed in December 1987 and served a four year term ending December 1991. The present membership of the Committee is:

**Judge Everett Burton, Chairman, Scioto County Court of Common Pleas, Portsmouth.**

**William F. Kluge, private practitioner, Lima.**

**Max Kravitz, Professor, Capital University School of Law, Columbus.**

**John S. Pyle, private practitioner, Cleveland.**

**Joann Bour-Stokes, Interim Supervisor, Death Penalty Section, Ohio Public Defender Commission, Columbus.**

Additional information about each member is contained in Appendix A.

At its first meeting, the Committee elected Judge Burton as Chairman. He has subsequently been reelected and continues to serve in that capacity.

When the substantive amendments to Rule 65 were adopted effective January 1991, the Court also adopted technical amendments to the rule that require the election of the chairman to a two year term. The amendments also provide for reelection to the post of chairman. Meetings may be called by the chairman, at the request of a majority of the members of the Committee, or by the Supreme Court. The Committee continues to meet at least every three months as required by the rule.

Members of the Committee do not currently receive compensation for their service, but are reimbursed for travel expenses.

## VI DUTIES AND OPERATIONS OF THE COMMITTEE

The initial response to Rule 65 was exceptionally high. The commitment of the Supreme Court to improving the level of representation in capital cases has paid off with a continued commitment from the criminal defense bar. Despite the fact that attorneys must attend twelve hours of specialized training every two years and keep up with the latest developments in criminal and capital defense, and despite the fact that attorneys are not particularly well-compensated for these cases, there are 637 attorneys qualified for appointment as counsel in capital cases in Ohio. (See Appendix K). Beginning in July 1990, the Committee began a yearly review of the statewide list to remove those attorneys who had not maintained the continuing legal education requirement for specialized training. Those who remain on the list are the attorneys most committed to providing a high level of representation to indigent persons accused of capital crimes.

Attendance at each of the two death penalty training seminars that are conducted each year continues to between 150 and 200. The fact that these attorneys are exposed to the latest developments and ideas in capital defense makes it much more likely that these attorneys will plan successful strategies to ensure the defendant receives a fair trial than those who have not had the training.

The number of capital convictions in Ohio over the last seven years is:

July 1, 1985 - June 30, 1986	23
July 1, 1986 - June 30, 1987	12
July 1, 1987 - June 30, 1988	18
July 1, 1988 - June 30, 1989	11
July 1, 1989 - June 30, 1990	8
July 1, 1990 - June 30, 1991	10
July 1, 1991 - June 30, 1992	14

These figures, in spite of increasing capital indictments, suggest to some an improvement in the level of representation, which continues to come at a relatively low cost. While the fiscal year 1992 cost per case increased to \$17,039, primarily because of several extremely expensive and complicated cases, the previous costs per case were steady

at approximately \$13,000 per case. The overall trend in the cost per case has been increasing at a relatively low rate while the level of practice has substantially increased.

Ohio's Rule 65 has continued to be the model for other states and the federal government in their efforts to improve the level of representation in capital cases. The Virginia Supreme Court recently adopted a similar procedure for qualifications and the Supreme Court of Indiana has adopted Criminal Rule 24, which is also patterned after Rule 65. See Appendices E and F, respectively. The Supreme Court of Tennessee continues to consider adoption of a rule that is patterned after Rule 65 and the operations of the Rule 65 Committee.

Twice in 1990, the Rule 65 Committee was requested to submit reports to the United States Congress. The first report was submitted to the House Judiciary Committee, and the second was submitted to the entire United States House of Representatives. Both concerned the operation and success of Rule 65. The House was considering a federal crime bill that included a federal death penalty at the time the reports were submitted. The reports are included as Appendices G and H, respectively. The Committee was also informed of the provisions of H.B. 5269 in 1990 which would have required the states to create a separate appointing authority for capital cases. These authorities would be similar to the Rule 65 Committee, but would appoint counsel in capital cases as opposed to the present system where the trial court makes the actual appointment.

## **VII CONCLUSION**

While the Supreme Court of Ohio took a bold step in enacting Rule 65, and the rule has done a great deal to improve the level of representation in Ohio, there is more to be done to guarantee that high quality representation is provided in each and every prosecution in Ohio. Although Ohio has taken great steps to ensure that proper representation is provided, the fees that are paid to appointed counsel in death penalty cases are still too low to attract all of the best defense attorneys from around the state. Often the fees are so low that attorneys cannot afford to provide representation and therefore do not become certified under Rule 65. These levels of compensation also vary from county to county. Where an attorney in one county may be compensated at a rate that is reasonable, the attorney in a neighboring county may be compensated at a rate that discourages any representation.

The amount of funding for expert witnesses and investigation also varies from county to county and case to case. This is particularly exacerbated by the budget situation faced by many counties. The future of high quality representation in capital cases is dependent on the Supreme Court and the entire justice system seeking creative solutions to these difficult problems just as the Court and bar did in 1987 when Rule 65 was enacted.

The Committee appreciates the strong support it has received from the justices and staff of the Supreme Court, and from the judges and lawyers throughout the state. The members of the Committee look forward to being able to continue to serve the bench, the bar, the public, and the entire justice system through their service to the Supreme Court.

**MEMBERS OF THE COMMITTEE ON THE APPOINTMENT OF  
COUNSEL FOR INDIGENT DEFENDANTS IN CAPITAL CASES**

The Honorable Everett Burton is a judge of the Scioto County Court of Common Pleas, where he has served since February 1991. Prior to his election to that court, he served as a judge of the Portsmouth Municipal Court from 1986.

Judge Burton was Prosecuting Attorney of Scioto County from 1955 to 1975. In 1976, he was appointed by the Governor as the first chairman of the Ohio Public Defender Commission, and served as its chairman for ten years. He is a founding member of the Rule 65 Committee, having been appointed in 1988 and reappointed to a five year term beginning January 1993. He is the Committee's first and only chairman.

A graduate of the University of Kentucky College of Law, he received his LLB degree in 1951 and the J.D. in 1970.

Judge Burton's many activities include membership in the Ohio State Bar Association and the Ohio Common Pleas Judges Association. He is a member and former president of the Portsmouth Bar and Law Library Association; a former member and president of the Ohio Prosecuting Attorneys Association; and a former member and president of the National District Attorneys Association. He is also a former member of the Ohio Crime Commission and the Supreme Court of Ohio Criminal Rules Committee.

William F. Kluge is in the private practice of law in Lima. A graduate of Alderson-Broadus College and the Ohio Northern University School of Law, he has engaged in civil and criminal litigation for seventeen years. Mr. Kluge has served as defense counsel in more than thirteen capital cases, and has been on the faculty for death penalty seminars in Ohio.

He is a member of the Allen County and Ohio State Bar Associations, and is a founding member and the current president of the Ohio Association of Criminal Defense Lawyers (OACDL). Mr. Kluge is an original member of the Rule 65 Committee and is currently serving a five year term ending December 1994.

**Max Kravitz** received his undergraduate degree in 1969 from the Ohio State University and his law degree from Capital University Law School in 1973. In addition to his duties as a full time professor at the Capital University Law School, he maintains an active private practice emphasizing criminal defense litigation.

Prior to joining Capital University, Mr. Kravitz was employed by the Legal Aid and Defender Society in Columbus. He is a former president of the Ohio Association of Criminal Defense Lawyers (OACDL) and is a member of numerous organizations, including the American Bar Association, the Ohio State Bar Association, and Columbus Bar Association. Mr. Kravitz is also an original member of the Rule 65 Committee and is currently serving a five year term that will end December 1993.

**John S. Pyle** was appointed in December 1991 to a five year term on the Rule 65 Committee. He has been a partner in the Cleveland law firm of Gold, Rotatori, Schwartz & Gibbons since 1981, and previously served four years as an assistant United States attorney and five years as an Assistant County Prosecutor in Cuyahoga County.

A veteran of the United States Army, Mr. Pyle received his undergraduate degree from Hiram College and his law degree from Case Western Reserve University. He has extensive teaching experience and has served as an instructor for the Federal Bureau of Investigation, the United States Attorney, and the Ohio Fire Marshal.

**Joann Bour-Stokes** is the newest member of the Rule 65 Committee, having been appointed in November 1992 to complete an unexpired term ending December 1995.

Ms. Bour-Stokes currently serves as Interim Supervisor of the Death Penalty Section for the Ohio Public Defender. Previously, she was Chief Appellate Counsel of the section, and an assistant State Public Defender.

Ms. Bour-Stokes received her undergraduate degree from The Ohio State University and completed her legal education at the University of Akron School of Law. She has also served as an Adjunct Professor at the University of Akron School of Law and is a frequent lecturer at seminars throughout Ohio on issues related to capital cases.

**RULES OF SUPERINTENDENCE FOR COURTS OF COMMON PLEAS**

**RULE 65. APPOINTMENT OF COUNSEL FOR  
INDIGENT DEFENDANTS IN CAPITAL CASES**

**As amended effective January 1, 1991**

**I. QUALIFICATION FOR ELIGIBILITY TO BE COURT-APPOINTED  
COUNSEL FOR INDIGENT DEFENDANTS CHARGED WITH A  
CAPITAL OFFENSE IN THE COURTS OF OHIO**

**(A) Trial Counsel.**

(1) At least two attorneys must be court-appointed to represent an indigent defendant charged with a capital offense. At least one of the appointed counsel must maintain a law office in the State of Ohio and have experience in Ohio criminal trial practice.

The counsel appointed shall be designated "lead counsel" and "co-counsel."

(2) Court-appointed "Lead Counsel" must meet all of the following:

- a. Be admitted to the Ohio Bar or admitted to practice *pro hac vice*;
- b. Have at least three years of litigation experience, criminal or civil;
- c. Have specialized training in the defense of persons accused of capital crimes as defined by the Committee;
- d. Have at least one of the following qualifications (i or ii):
  - i. Experience as "lead counsel" in the jury trial of at least one capital case;
  - ii. Experience as "co-counsel" in the trial of at least two capital cases;
- e. Have at least one of the following qualifications (i, ii, or iii):
  - i. Experience as "lead counsel" in the jury trial of at least one murder or aggravated murder case;
  - ii. Experience as "lead counsel" in ten or more criminal or civil jury trials, at least three of which were felony jury trials;
  - iii. Experience as "lead counsel" in at least one of the following:
    - Three murder or aggravated murder jury trials;
    - One murder or aggravated murder jury trial and three felony jury trials;

- Three aggravated or first- or second-degree felony jury trials in a Common Pleas Court within the past three years, at least one of which shall have involved a charge of a violent crime.

**(3) Court-appointed "Co-Counsel" must meet all of the following:**

- a. Be admitted to the Ohio Bar or admitted to practice *pro hac vice*;
- b. Be admitted to the practice of law for at least three years;
- c. Have specialized training in the defense of persons accused of capital crimes as defined by the Committee;
- d. Have at least one of the following qualifications (i, ii, or iii):
  - i. Experience as "co-counsel" in one murder or aggravated murder trial;
  - ii. Experience as "lead counsel" in one first-degree felony jury trial;
  - iii. Experience as "lead" or "co-counsel" in at least two felony jury or civil jury trials in Common Pleas Court.

**(4) Exceptional Circumstances.** If an attorney does not meet the qualification requirements of paragraphs (A)(2) or (A)(3) above, the attorney may still be court-appointed "lead" or "co-counsel" at trial if it can be demonstrated to the satisfaction of the majority of the Committee (see II of this Rule) that competent representation will be provided to the defendant. In determining whether an attorney may be qualified under this paragraph, the Committee may consider the following:

- a. Experience in the trial of criminal cases;
- b. Specialized post-graduate training in jury trials;
- c. Specialized training in the defense of persons accused of capital crimes;
- d. Any other relevant considerations.

**(5)** As used in this Rule, "trial" means a case concluded with a Criminal Rule 29 judgment of acquittal or submission to the trial court or jury for decision and verdict.

**(B) Appellate Counsel.**

**(1)** At least two attorneys must be court-appointed to appeal cases where the court has ordered the death penalty. Both counsel must possess adequate criminal appellate, post-conviction, or habeas corpus experience commensurate with the appellate responsibilities of a capital case. At least one of the appointed counsel must maintain a law office in Ohio.

**(2) Court-appointed "Appellate Counsel" must meet all of the following:**

- a. Be admitted to the Ohio Bar or admitted to practice *pro hac vice*;
- b. Have at least three years of litigation experience, criminal or civil;

c. Have specialized training in the defense of persons accused of capital crimes, or in the appeal of cases in which the death penalty was the sentence, as defined by the Committee;

d. Have experience as counsel in the appeal of at least three felony convictions within the past three years.

(3) **Exceptional Circumstances.** If any attorney does not meet the qualification requirements of paragraph (B)(2) above, the attorney may still be court-appointed appellate counsel if it can be demonstrated to the satisfaction of a majority of the Committee (see II of this Rule) that competent representation will be provided to the defendant. In so determining, the Committee may consider the following:

a. Specialized training in the trial or appeal of cases in which the death penalty may be imposed;

b. Experience in the trial or appeal of criminal or civil cases;

c. Any other relevant considerations.

(C) **Savings Clause.** Attorneys certified by the Committee prior to January 1, 1991 may maintain their certification by fulfilling the Standards for Retention on Appointed Counsel Lists adopted by the Committee, notwithstanding the requirements of Sections I(A)(2)(d), I(A)(3)(b) and (d), and I(B)(2)(d) as amended effective January 1, 1991.

## **II. COMMITTEE ON THE APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN CAPITAL CASES**

(A) The Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases is hereby created.

(B) **Selection of Committee Members.** The Committee shall be composed of five attorneys. Three members of the Committee shall be selected by a majority vote of all members of the Supreme Court of Ohio; one shall be selected by the Ohio State Bar Association; and, one shall be selected by the Ohio Public Defender Commission.

(C) **Eligibility for Appointment to the Committee.**

(1) Member of the Ohio Bar;

(2) Represented criminal defendants for not less than five (5) years;

(3) Demonstrates a knowledge of the law and practice of capital cases;

(4) Currently not a prosecuting attorney, city director of law, village solicitor, or similar officer or their assistant or employee, nor an employee of any court.

(D) **Overall Composition.** The overall composition of the Committee shall meet the following criteria:

(1) No more than three members shall be registered members of the same political party;

(2) No more than two members shall reside in the same county; and

(3) No more than one shall be a judge.

(E) **Initial Appointments, Terms, Vacancies.** Initial appointments to the Committee shall be made by the respective appointing authorities (listed in [A] above) within forty-five days of the effective date of this Rule.

Of the three initial appointments to be made by a majority vote of all members of the Supreme Court of Ohio, one shall be for a term of five years, one for a term of two years, and one for a term of one year.

The Ohio State Bar Association's initial appointment shall be for a term of four years.

The Ohio Public Defender Commission's initial appointment shall be for a term of three years.

Thereafter, the term of office for each member shall be five (5) years, each term ending on the same day of the same month as did the term which it succeeds.

When a vacancy occurs (at the expiration of a term, or by a member's voluntary resignation), the authority that appointed the departing member of the Committee shall appoint the successor to office. Any member appointed to fill a vacancy occurring prior to the expiration of a term shall hold office for the remainder of the term. Any member shall continue in office subsequent to the expiration date of the term until a successor takes office or until a period of sixty (60) days has elapsed, whichever occurs first.

(F) **Election of Chairman.** The Committee shall elect a chairman and such other officers as are necessary. The chairman shall serve for two years and may be reelected to additional terms.

(G) **Powers and Duties of the Committee.** The Committee shall:

(1) Draft, and at least once per year notify the Bar of, the procedures for applying for inclusion on the list(s) of those eligible to be court-appointed counsel for indigent capital defendants;

(2) Provide all common pleas and appellate court judges and the Ohio Public Defender with the list of all attorneys who meet the qualifications for eligibility to be court-appointed counsel for indigent defendants charged with a capital offense in the courts of Ohio, and who may therefore receive court appointments to defend or appeal capital cases;

(3) Periodically review the lists, all court appointments given to attorneys in capital cases, and the result and status of those cases;

(4) Develop criteria and procedures for retention on or deletion from lists of eligible counsel including, but not limited to, some form of mandatory continuing legal education on the defense of capital cases;

(5) Expand, reduce, or otherwise modify the lists of qualified attorneys as it deems appropriate and necessary in accord with item d above;

(6) Sponsor or co-sponsor specialized training on the defense of capital cases with organizations such as local bar associations, the Ohio State Bar Association, and the Ohio Public Defender Commission; and

(7) If and when deemed appropriate, recommend to the Ohio Supreme Court amendments to this Rule.

(H) Meetings. The Committee shall meet at the call of the chairman, at the request of a majority of the members, or at the request of the Supreme Court of Ohio. The Committee shall meet at least once every three months. A quorum will consist of three members. A majority of the entire Committee is necessary for the Committee to elect a chairman and take any other action.

(I) Compensation. All members of the Committee shall receive equal compensation in an amount to be established by the Ohio Supreme Court.

### III. PROCEDURES FOR COURT APPOINTMENTS OF COUNSEL

(A) Appointing Counsel. All municipal, county, common pleas, and appellate courts within the State shall appoint counsel to represent indigent defendants charged with a capital offense in accordance with Section I of this Rule. Each court shall be free to adopt local rules requiring qualifications in addition to the mandatory minimum requirements established by this Rule. The appointing court shall not assign, and counsel shall not accept, an appointment which creates a total workload so excessive that it interferes with or effectively prevents the rendering of quality representation in accordance with constitutional and professional standards. Appointments of counsel for these cases should be distributed as widely as possible among the eligible members of the Bar in an appointing court's jurisdiction. An appointing court shall, whenever possible, appoint at least one eligible attorney who routinely practices in that court's jurisdiction. When no one is available and it is necessary or in the interests of justice appropriate to do so, the court may appoint counsel from another jurisdiction, preferably at least one of whom has had experience in the appointing court's jurisdiction.

(B) Notice to the Committee.

(1) Within two weeks of appointment, the appointing court shall notify the Committee Chairman of the appointment. The written notice shall include:

- a. The court and the judge assigned to the case;
- b. The full case name and number;
- c. A copy of the indictment;
- d. The names, business addresses, phone numbers, and, if applicable, status ("lead" or "co-counsel") of all attorneys appointed; and
- e. If none of the attorneys appointed maintains a law office or regular practice in the appointing court's jurisdiction, why their appointment was deemed necessary.

(2) The trial court shall notify the Committee Chairman, in writing, of the ultimate disposition of the case within one week of final disposition. The notice shall include:

- a. The title and section of the Revised Code of all crime(s) of which the defendant pleaded and/or was found guilty;
- b. The date sentence was rendered;
- c. The court's sentence;
- d. A copy of the court's entry reflecting the above;

and

- e. A statement concerning the appointment of counsel for the appeal, if the death penalty was imposed or if the defendant requested appointment of counsel for an appeal.

(C) Support Services. The appointing court shall provide appointed counsel, as required by Ohio law or the federal Constitution, federal statutes, and professional standards, with the investigator(s), social worker(s), mental health professional(s), or other forensic experts and other support services reasonably necessary or appropriate for counsel to prepare and present an adequate defense at every stage of the proceedings - before, during and after trial - including, but not limited to, determinations relevant to competency to stand trial, a Not Guilty by Reason of Insanity plea, cross-examination of expert witnesses called by the prosecution, disposition following conviction, and preparation for the sentencing phase of the trial.

#### **IV. Monitoring; Removal.**

(A) The appointing court should monitor the performance of assigned counsel to ensure that the client is receiving quality representation. If there is compelling evidence that an attorney has ignored basic responsibilities of an effective lawyer, which results in prejudice to the client's case, the court shall report such action to the Committee, which shall accord the attorney an opportunity to be heard.

(B) Complaints concerning the performance of attorneys assigned in the trials or appeals of indigent defendants in capital cases shall be reviewed by the Committee pursuant to the provisions of Section II(A)(5)(c), (d), and (e) of this rule.

#### **V - VIII. Reserved.**

#### **IX. Effective Date**

(A) The effective date of this Rule shall be October 1, 1987.

(B) The amendments to Section II(A)(5)(b), Section III(B)(2), and to the Subcommittee Comments following Section II of this Rule adopted by the Supreme Court of Ohio on June 28, 1989, shall be effective on July 1, 1989.

(C) The amendments to Sections I(A)(2), I(A)(3), I(B), and II, and the addition of Sections I(C) and IV, adopted by the Supreme Court of Ohio on December 11, 1990, shall be effective on January 1, 1991.

**Standards For Approving Death Penalty CLE  
and  
Standards For Retention On Lists For Eligible Counsel**

**Effective January 12, 1989**

**I. Programs for Specialized Training in the Defense of Persons Charged with a Capital Offense.**

- A. To be eligible for certification or sponsorship by the Rule 65 Committee, a death penalty seminar shall include no less than six (6) hours of instruction devoted to the investigation, preparation, and presentation of a death penalty trial or appeal.
- B. The sponsor of a death penalty seminar shall apply for certification from the Rule 65 Committee no later than sixty (60) days before the date of the proposed seminar. An application for certification must include the curriculum for the seminar and a biographical sketch of each member of the faculty presenting the seminar. A seminar certified by the Committee will qualify as "specialized training in the defense of persons charged with capital crimes" pursuant to Rule 65 for all attorneys who show proof of attendance to the Committee.
- C. The sponsor will issue a certificate of attendance to each attendee at the conclusion of each seminar, and shall submit a list of attendees to the Rule 65 Committee within thirty (30) days after the completion of the seminar.
- D. The curriculum for a certified Rule 65 Committee death penalty seminar should include, but is not limited to, specialized training in the following areas: (1) an overview of current developments in death penalty litigation, (2) death penalty voir dire, (3) trial phase presentation, (4) use of experts in the trial and penalty phase, (5) investigation, preparation, and presentation of mitigation, (6) preservation of the record, (7) counsel's relationship with the accused and his family, and (8) death penalty appellate and post-conviction litigation in state and federal courts.

**II. Standards for Retention on Appointed Counsel Lists.**

- A. An attorney who has been previously approved and placed on the Rule 65 Committee list for appointments as lead counsel, co-counsel or appellate counsel shall attend and complete no less than twelve (12) hours of Rule 65 Committee-approved "specialized training in the defense of persons accused of capital crimes" every two years, commencing July 1, 1988, in order to be eligible for retention on any list for appointment.
- B. Attorneys who have not been approved for appointment on all lists required to be kept by the Rule 65 Committee may apply or reapply for approval of the Committee, provided they have completed twelve (12) hours of specialized training in the defense of persons accused of capital crimes in a two-year period prior to making application and otherwise meet all the qualifications for each individual list.

**APPENDIX C**

- C. An attorney who attends an out-of-state death penalty CLE seminar for Rule 65 Committee credit may apply to the Committee for credit. Proof of attendance must include the curriculum for the seminar and biographical sketches of the faculty.
- D. An attorney who attends an out-of-state seminar providing specialized training in the defense of persons accused of capital crimes may apply for retroactive approval of the seminar for Rule 65 Committee CLE credit. Applications must include the curriculum for the seminar, biographical sketches of the faculty, and proof of attendance.

## **PUBLIC DEFENDER COMMISSION**

Promulgated pursuant to RC 111.15

### **120-1-13 Denial of reimbursement to the counties in capital cases**

The Ohio public defender commission, pursuant to sections 120.34 and 120.35 of the Revised Code, shall review each request for reimbursement to a county in an indigent capital case at the trial, appellate, and/or post-conviction levels, to ensure that the following criteria governing the appointment of counsel are met:

(A) Lead counsel and co-counsel are appointed from the lists maintained by the Ohio supreme court, pursuant to rule 65 of the "Rules of Superintendence of the Common Pleas Court."

(B) All other provisions of rule 65 are adhered to by the appointing court, board of county commissioners, and attorneys appointed in the case for which reimbursement is sought.

If these criteria are not met, the Ohio public defender commission shall deny reimbursement to the county for all of the defender costs associated with that indigent capital case.

This rule shall be effective for all appointments of counsel in capital trial, appellate, and/or post-convictions cases occurring after October 1, 1988.

**HISTORY: Eff. 10-6-88**

**APPENDIX D**

VIRGINIA  
STANDARDS FOR THE QUALIFICATIONS OF APPOINTED COUNSEL  
IN CAPITAL CASES  
FEBRUARY 22, 1992

Pursuant to Section 19.2-163.8(E) of the Code of Virginia of 1950 as amended, the Public Defender Commission, in conjunction with the Virginia State Bar, hereby sets forth the following standards for appointed counsel determined to be qualified and possessing proficiency and commitment to quality representation in capital cases.<sup>1</sup> While Section 19.2-163.7 of the Virginia Code, effective July 1, 1992, does not require more than one attorney, the appointment of two attorneys is strongly urged for trial, appellate and habeas proceedings. Thus, the standards often refer to "lead counsel"<sup>2</sup> and "co-counsel". If a public defender is appointed as either "lead" or "co-counsel", the other attorney should be appointed from the private bar.

A. TRIAL COUNSEL:

1. Court-appointed "lead counsel" must:

- a. Be an active member in good standing of the Virginia State Bar or admitted to practice *pro hac vice*.
- b. Have at least five years of criminal litigation practice with demonstrated competence.
- c. Have had, within the past two years, some specialized training in capital litigation.
- d. Have at least one of the following qualifications:
  - i. Experience as "lead counsel" in the defense of at least one capital case;
  - ii. Experience as "co-counsel" in the defense of at least two capital cases;
  - iii. Experience as "lead counsel" (or as lead prosecutor) in at least five felony jury trials in Virginia courts involving crimes of violence which carry, upon conviction, a minimum sentence of at least five years imprisonment.

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<sup>1</sup>Whenever the term "capital case" is used, it shall mean a case tried to a jury wherein the sentencing phase was held pursuant to Section 19.2-264.2.

<sup>2</sup>Whenever the term "lead counsel" is used, this would also include an attorney acting as sole counsel in a case.

APPENDIX E

- e. Be familiar with the requisite court system, including specifically the procedural rules regarding timeliness of filings and procedural default.
- f. Have demonstrated proficiency and commitment to qualify representation.

2. Court-appointed "co-counsel" must:

- a. Meet all of the requirements of "lead counsel" except 1(b) and 1(d).
- b. Have at least one of the following qualifications:
  - i. Experience as "lead counsel" or "co-counsel" in a murder trial;
  - ii. Experience as "lead" or "co-counsel" in at least two criminal jury trials.

**B. APPELLATE COUNSEL** - Attorneys qualifying as court appointed "lead counsel" under Section A(1) automatically qualify as "lead" appellate counsel. Other appointed appellate counsel must meet the following requirements:

- 1. Be an active member in good standing of the Virginia State Bar or admitted to practice *pro hac vice*.
- 2. Have briefed and argued the merits in:
  - a. At least three criminal cases in an appellate court; or
  - b. The appeal of a case in which the death penalty was imposed.
- 3. Have had, within the past two years, some specialized training in capital case litigation and be familiar with the rules and procedure of appellate practice.

**C. HABEAS CORPUS COUNSEL**

- 1. Habeas Corpus "Lead Counsel" must satisfy one of the following requirements:
  - a. Be qualified as "lead counsel" pursuant to Section A(1) and possess familiarity with Virginia as well as federal habeas corpus practice.
  - b. Possess experience as counsel of record in Virginia or federal post-conviction proceedings involving attacks on the validity of one or more felony convictions as well as a working knowledge of state and federal habeas corpus practice through specialized training in the representation of persons with death sentences.
- 2. Habeas Corpus "Co-Counsel" must satisfy one of the following requirements:
  - a. Service as lead or co-counsel in at least one capital habeas corpus proceeding in Virginia and/or federal courts during the last three (3) years;
  - b. Have at least seven (7) years of civil trial and appellate litigation experience in the Courts of Record of the Commonwealth and/or federal courts.

IN THE SUPREME COURT OF INDIANA  
ORDER AMENDING RULES OF CRIMINAL PROCEDURE

Pursuant to the authority vested in this Court to provide by rule for the procedure employed in all courts of this State, Criminal Rule 24 of the Indiana Rules of Criminal Procedure is amended by the addition of the following provisions:

CRIMINAL RULE 24

CAPITAL CASES

\*\*\*\*

**(B) Appointment of Qualified Trial Counsel.** Upon a finding of indigence, it shall be the duty of the judge presiding in a capital case to enter a written order specifically naming two (2) qualified attorneys to represent an individual in a trial proceeding where a death sentence is sought. The provisions for the appointment of counsel set forth in this section do not apply in cases wherein counsel is employed at the expense of the defendant.

**(1) Lead Counsel; Qualifications.** One (1) of the attorneys appointed by the court shall be designated as lead counsel. To be eligible to serve as lead counsel, an attorney shall:

- (a) be an experienced and active trial practitioner with at least five (5) years of criminal litigation experience;
- (b) have prior experience as lead or co-counsel in no fewer than five (5) felony jury trials which were tried to completion;
- (c) have prior experience as lead or co-counsel in at least one (1) case in which the death penalty was sought; and
- (d) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

**(2) Co-Counsel, Qualifications.** The remaining attorney shall be designated as co-counsel. To be eligible to serve as co-counsel, an attorney shall:

- (a) be an experienced and active trial practitioner with at least three (3) years of criminal litigation experience;
- (b) have prior experience as lead or co-counsel in no fewer than three (3) felony jury trials which were tried to completion; and

APPENDIX F

- (c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

**(3) Workload of Appointed Counsel.** In the appointment of counsel, the nature and volume of the workload of appointed counsel must be considered to assure that counsel can direct sufficient attention to the defense of a capital case.

(a) Attorneys accepting appointments pursuant to this rule shall provide each client with quality representation in accordance with constitutional and professional standards. Appointed counsel shall not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

(b) A judge shall not make an appointment of counsel in a capital case without assessing the impact of the appointment on the attorney's workload.

(c) Salaried or contractual public defenders may be appointed as trial counsel in a capital case, if:

(i) the public defender's caseload will not exceed twenty (20) open felony cases while the capital case is pending in the trial court;

(ii) no new cases will be assigned to the public defender within thirty (30) days of the trial setting in the capital case;

(iii) none of the public defender's cases will be set for trial within fifteen (15) days of the trial setting in the capital case; and

(iv) compensation is provided as specified in paragraph (C).

**(C) Compensation of Appointed Trial Counsel.** All trial defense counsel appointed in a capital case shall be compensated under this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Periodic billing and payment during the course of counsel's representation shall be made.

**(1) Hours and Hourly Rate.** Defense counsel appointed in capital cases shall be compensated for time and services performed at the hourly rate of seventy dollars (\$70.00) upon determination by the trial judge that such time and services are reasonable and necessary for the defense of the defendant. In the event the appointing judge determines that the rate of compensation is not representative of practice in the community, the appointing judge may request the Executive Director of the Division of State Court Administration to authorize payment of a different hourly rate of compensation in a specific case.

**(2) Support Services and Incidental Expenses.** Counsel appointed in a capital case shall be provided with adequate funds for investigative, expert, and other services necessary to prepare and present an adequate defense at every stage of the proceeding, including the sentencing phase. In addition to the hourly rate provided in this rule, all counsel shall be reimbursed for reasonably incidental expenses as approved by the court of appointment.

**(3) Contract Employees.** In the event counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty case to reflect the limitations of case assignment established by this rule.

\* \* \* \*

**(J) Appointment of Appellate Counsel.** Upon a finding of indigence, the trial court imposing a sentence of death shall immediately enter a written order specifically naming counsel under this provision for appeal. If qualified to serve as appellate counsel under this rule, trial counsel shall be appointed as sole or co-counsel for appeal.

**(1) Qualifications of Appellate Counsel.** An attorney appointed to serve as appellate counsel for an individual sentenced to die, shall:

(a) be an experienced and active trial or appellate practitioner with at least three (3) years experience in criminal litigation;

(b) have prior experience within the last five (5) years as appellate counsel in no fewer than three (3) felony convictions in federal or state court; and

(c) have completed within two (2) years prior to appointment at least twelve (12) hours of training in the defense of capital cases in a course approved by the Indiana Public Defender Commission.

**(2) Workload of Appointed Appellate Counsel.** In the appointment of Appellate Counsel, the judge shall assess the nature and volume of the workload of appointed appellate counsel to assure that counsel can direct sufficient attention to the appeal of the capital case. In the event the appointed appellate counsel is under a contract to perform other defense or appellate services for the court of appointment, no new cases for appeal shall be assigned to such counsel until the Appellant's Brief in the death penalty case is filed.

**(K) Compensation of Appellate Counsel.** Appellate counsel appointed to present an individual sentenced to die shall be compensated under this provision upon presentment and approval of a claim for services detailing the date, activity, and time duration for which compensation is sought. Attorneys employed by appellate counsel for consultation shall be compensated at the same rate as appellate counsel.

**(1) Hours and Hourly rate.** Appellate defense counsel appointed to represent an individual sentenced to die shall be compensated for time and services performed at the hourly rate of seventy dollars (\$70.00) upon determination by the trial judge that such time and services are reasonable and necessary for the defense of the defendant. In the event the appointing judge determines that this rate of compensation is not representative of practice in the community, the appointing judge may request the Executive Director of the Division of State Court Administration to authorize payment of a different hourly rate of compensation in a specific case.

**(2) Contract Employees.** In the event appointed appellate counsel is generally employed by the court of appointment to perform other defense services, the rate of compensation set for such other defense services may be adjusted during the pendency of the death penalty appeals to reflect the limitations of case assignment established by this rule.

**(3) Incidental Expenses.** In addition to the hourly rate provided in this rule, appellate counsel shall be reimbursed for reasonably incidental expenses as approved by the court of appointment.

\* \* \* \*

This amendment shall be effective January 1, 1992.

# The Supreme Court of Ohio

30 EAST BROAD STREET, COLUMBUS, OHIO 43266-0419

## MEMORANDUM

COMMITTEE ON THE  
APPOINTMENT OF COUNSEL FOR  
INDIGENT DEFENDANTS IN  
CAPITAL CASES

(614) 466-1551  
1-800-826-9010 (IN OHIO)

**TO:** UNITED STATES HOUSE OF REPRESENTATIVES  
JUDICIARY COMMITTEE

**FROM:** THE SUPREME COURT OF OHIO COMMITTEE ON THE  
APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN  
CAPITAL CASES

**DATE:** May 15, 1990

**SUBJECT:** OPERATION OF RULE 65 OF THE SUPREME COURT OF OHIO'S  
RULES OF SUPERINTENDENCE FOR COURTS OF COMMON PLEAS

Rule 65 was originally drafted and proposed by a committee of the Ohio State Bar Association at the urging of members of the Supreme Court of Ohio and the Ohio Public Defender. The original bar association committee that drafted the rule was composed of prosecutors and judges as well as defense attorneys and law professors. The Rule met little opposition, except on procedural technicalities, when submitted and was quickly adopted by the Supreme Court of Ohio. The Rule became effective October 1, 1987.

Rule 65 sets out the qualifications required for counsel to be eligible to accept appointments to represent indigent defendants in capital cases in Ohio. The qualifications required for counsel to accept appointment are substantially similar to the qualifications set out in Guideline 5.1 of the American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases, although the Ohio rule predates the ABA Guidelines. The objectives of Rule 65 and the ABA Guidelines are essentially the same. Other provisions of Rule 65 concerning workload, monitoring, supporting services, training, and compensation are similar in fact and in operation to the comparable ABA

## APPENDIX G

Guidelines. The Rule requires counsel to have experience in the trial or appeal of criminal cases and requires "specialized training in the defense of persons charged with capital crimes." Separate requirements are set out for lead trial counsel, trial co-counsel, and appellate counsel.

The Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases established by the Rule is composed of three persons appointed by the Supreme Court, one person appointed by the Ohio State Bar Association, and one person appointed by the Ohio Public Defender.

The Committee held its first meeting at the Supreme Court in January of 1988. The first order of business was to develop procedures for attorneys to apply for certification under the Rule. The second was to inform both the bench and the bar about Rule 65 and the necessity of appointing only members of the bar who met the requirements of Rule 65. The Rule required the Committee to develop a list of qualified attorneys to be provided to judges throughout the state. The Committee decided that it would be necessary to develop an application procedure that would put the burden of applying on the attorneys who wished to have their names on the list. The Committee also set up guidelines for approving persons to be on the list that mirrored the Rule itself.

Once the procedures for applying for certification were developed, the Committee drafted forms for attorneys to apply for certification and reporting forms for judges so the Committee could monitor compliance with Rule 65. The application forms with accompanying instructions and information were sent to all of the judges of the Courts of Common Pleas, the judges of the Municipal and County Courts, the judges of the Courts of Appeals, all 88 county Clerks of Court, and all of the bar associations throughout the state. In addition, the Ohio Association of Criminal Defense Lawyers ran a copy of the

application and accompanying instructions in its publication, *The Vindicator*. The accompanying instructions encouraged everyone (especially the judges) to make the application available to as many qualified attorneys as possible. The new reporting forms were sent to all of the judges and clerks of court who were affected. Again, detailed instructions accompanied the forms.

The response was astounding. After the first mailing of applications and instructions, the Committee received approximately four hundred (400) applications. The committee that drafted the Rule had anticipated that no more than two hundred (200) attorneys from around the state would ever make application. Twice that number applied in the first months. As of this writing, over eight hundred and thirty-seven (837) attorneys have applied for certification under Rule 65. (See attached status report dated March 15, 1990.) Judicial compliance with the reporting and appointing requirements of Rule 65 has been uniformly high, once the courts became aware of Rule 65 and the Supreme Court's Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases.

Initially, the biggest stumbling block to attorney certification was the lack of "specialized training in the defense of persons charged with capital crimes." In the first batch of applications, a very high percentage of the attorneys who were otherwise qualified had not had any "specialized training." The Committee had chosen 1981 (the year the death penalty was reenacted in Ohio) as the cutoff year for "specialized training." Although there had been several qualifying seminars in the state since 1981, there had not been any since 1985. A program of putting on numerous training seminars was undertaken by the Ohio Public Defender and other organizations to meet the demand. Presently there are 377 attorneys certified as "lead counsel" who have had "specialized training in the defense of persons charged with capital crimes."

After the initial wave of applications and the initial wave of attendance at qualifying seminars, the Committee concluded that it was advisable to require continuing "specialized training." In order to remain on the List of Attorneys Eligible to be Court-Appointed Counsel for Indigent Defendants in Capital Cases, every attorney must now receive twelve (12) hours of "specialized training" every two years, commencing July 1, 1988. A review of the list and compliance with the "specialized training" requirements will commence on July 1, 1990.

The response to Rule 65 has not only been much greater than anticipated, it has also improved the general level of representation in capital cases. Attorneys who have been exposed to the latest case law and the latest strategies for defending capital cases are much more likely to make the right motions, make the right objections, and plan successful strategies than attorneys who have not had that exposure. The ongoing requirement of "specialized training" mandates that attorneys keep current with the latest developments in capital defense strategies. In the last two years, over six hundred (600) attorneys have attended two day death penalty training seminars in Ohio. This training has led to better representation for the capitally charged indigent defendant.

This improvement in representation has come at a relatively low cost. According to the Ohio Public Defender Commission Reimbursement Records, the average defense cost in fiscal year 1987 per capital case was nine thousand five hundred and fifty three dollars (\$9,553.00). By fiscal year 1989, this had increased to thirteen thousand and ninety dollars (\$13,090.00). This relatively small increase in cost per case is primarily attributable to an increase in the hourly rate for appointed counsel in most counties during this period and an increase in the maximum fees paid in many counties rather than the operation of Rule 65. Prior to Rule 65, it was standard practice to appoint two attorneys to capital cases.

Overall, Rule 65 has been very much of a success in Ohio. The Committee is now in the process of recommending amendments to the Rule to make it stricter. The number of attorneys who have been interested in taking appointments in capital cases has surprised everyone. The fact that over eight hundred attorneys are interested in providing quality capital representation and in obtaining the required "specialized training" indicates that members of the criminal defense bar are concerned with the level of practice in capital cases. One of the concerns voiced prior to enactment of the rule was that there would not be enough attorneys both qualified and willing to accept appointments. The number of attorneys willing to apply, be trained, and accept appointments has proved that concern to be groundless and justifies a tightening of the Rule.

The willingness of the courts of Ohio to cooperate with the Supreme Court of Ohio in implementing this rule also demonstrates their concerns for the need for better representation in these cases. Given a vehicle such as Rule 65 under which to improve the level of representation, the bench and the bar have shown a commitment to the idea of providing the best representation to indigent defendants charged with capital crimes.

Hon. Everett Burton, Chairman

John J. Callahan, Esq.

William F. Kluge, Esq.

Max Kravitz, Esq.

David C. Stebbins, Esq.

# The Supreme Court of Ohio

30 EAST BROAD STREET, COLUMBUS, OHIO 43266-0419

COMMITTEE ON THE  
APPOINTMENT OF COUNSEL FOR  
INDIGENT DEFENDANTS IN  
CAPITAL CASES

## MEMORANDUM

(614) 466-1551  
1-800-826-9016 (IN OHIO)

**TO: UNITED STATES HOUSE OF REPRESENTATIVES**

**FROM: SUPREME COURT OF OHIO COMMITTEE ON THE APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN CAPITAL CASES**

**RE: OPERATION OF RULE 65 OF THE SUPREME COURT OF OHIO'S RULES OF SUPERINTENDENCE FOR COURTS OF COMMON PLEAS**

**DATE: SEPTEMBER 21, 1990**

Rule 65, governing the appointment of counsel for indigent defendants in capital cases, was originally drafted and proposed by a committee of the Ohio State Bar Association at the urging of members of the Supreme Court of Ohio and the Ohio Public Defender. The original bar association committee that drafted the rule was composed of prosecutors and judges as well as defense attorneys and law professors. The Rule was quickly adopted by the Supreme Court, becoming effective October 1, 1987.

Rule 65 sets out the qualifications required for counsel to accept appointment in capital cases in Ohio. The qualifications are substantially similar to the qualifications set out in Guideline 5.1 of the American Bar Association Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. The Rule 65 qualifications are also substantially similar to the qualifications set out in proposed Title XIII of the Federal Crime Bill, with the exception of the creation of a separate appointment authority.

Once the Committee drafted the procedures and forms to apply for approval to accept appointments, this information was circulated throughout the state. The response was overwhelming. The drafting committee expected less than 200 attorneys throughout the state would apply to be eligible to accept appointments in capital cases. In the first month, the Rule 65 Committee received over 400 applications from attorneys. As of July of this year, the Committee had approved over 800 attorneys to be on the list of attorneys eligible to accept appointments in capital cases.

Not only has the response to Rule 65 been much greater than anyone anticipated, the general level of representation in capital cases has been improved by the requirement that attorneys receive "specialized training in the defense of capital cases." The ongoing requirement of 12 hours of specialized training very two years mandates that attorneys keep current with the latest developments in capital litigation. Attorneys who have been exposed to the latest case law and the latest strategies for defending capital cases are able to provide more professional representation in these most serious of cases.

## APPENDIX H

This improvement in representation has come at a relatively low cost. According to the Ohio Public Defender Commission Reimbursement Records, the average defense cost per capital case was \$9,553.00 in Fiscal Year 1982. By Fiscal Year 1990 this cost had only risen to \$12,431.00. This is a relatively small increase in cost per case. It is primarily attributable to an increase in the hourly rate in many counties during this period and an increase in the maximum fees, rather than the operation of Rule 65. Prior to Rule 65, it was standard practice to appoint two attorneys to capital cases as is required under Rule 65.

Overall, Rule 65 has been very much of a success in Ohio. The Committee has recommended to the Supreme Court and the Court has now published proposed amendments to Rule 65 to require stricter qualifications and more legal education. Everyone has been surprised by the number of attorneys who have been interested in taking appointments in capital cases. The fact that over 800 attorneys were interested in providing quality capital representation and in obtaining the required "specialized training in the defense of capital cases" indicates that the criminal defense bar is concerned with the level of representation in capital cases. One of the concerns voiced prior to the enactment of the Rule was that there would not be enough attorneys both qualified and willing to accept appointments. The number of attorneys willing to apply, be trained, and accept appointments has proven that concern groundless. The Committee felt that the rule could be tightened up without fear of not having enough attorneys to provide representation.

As of July 1, 1990, the Committee also reviewed the list of qualified attorneys to ensure that all had met the continuing education requirements of the Rule. Over 300 had not and were removed from the list, leaving in excess of 500 attorneys to handle approximately 100 death penalty cases a year. Even with the 500 attorneys, there is no shortage of attorneys qualified and willing to accept appointments.

The willingness of the courts of Ohio to cooperate with the Supreme Court and this Committee in implementing this Rule also demonstrates their concerns of the need for better representation in capital cases. Given a vehicle such as Rule 65 under which to improve the level of representation, the bench and the bar has shown a commitment to the idea of providing the best representation to indigent defendants charged with capital crimes.

Hon. Everett Burton, Chairman  
John J. Callahan, Esq.  
William F. Kluge, Esq.  
Max Kravitz, Esq.  
David C. Stebbins, Esq.

# YOU DON'T ALWAYS GET PERRY MASON

As Coleman goes to the chair, questions remain about his case—and the quality of legal defenders



APRIL 1987. THE SALT LAKE TRIBUNE

## William Andrews

NEXT TUESDAY MARKS THE latest hearing in a long appeals process for William Andrews, who has spent more than 17 years on death row. In 1974 Andrews and Dale Selby held up an electronics store in Ogden, Utah, and kept five hostages in the building's basement. The bystanders were tied up and forced to drink liquid drain cleaner during a brutal torture session. Although Andrews left the room before Selby raped one woman and shot all the hostages, killing three of them, both men were convicted of murder. (Selby was executed in 1987.) The Tenth Circuit Court of Appeals ruled last year that Andrews received competent representation, but his current attorneys say the inexperienced public defender assigned to the case made a number of tactical errors. They criticize the lawyer—who had been practicing just two months before the case came to trial—for not conducting a defense wholly independent from Selby's, and say he failed to effectively cross-examine witnesses for the prosecution, which could have helped Andrews avoid execution. If the state court does not find a reason to delay the sentence once again, it will order that Andrews die by lethal injection or firing squad within 60 days.

By RICHARD LACAYO

WITH TWO POWERFUL JOLTS OF ELECTRICITY, Roger Keith Coleman was executed last week in Virginia. But the questions about his guilt could not so easily be disposed of—in part because his court-appointed lawyers failed to put them to rest at his trial. On the night that Wanda Fay McCoy was murdered, Coleman claimed to have been at several points around the coal-mining town of Grundy. Shouldn't his lawyers have tried to retrace his steps on that night and search out witnesses? Shouldn't they have ventured into McCoy's or Coleman's home? At the very least, shouldn't they have presented to the jury the bag of bloody sheets and two cowboy shirts McCoy's neighbor found a few days after the murder?

Over six years ago, Jesus Romero was sentenced to death for taking part in the 1984 gang rape and murder of a 15-year-old in San Benito, Texas. He might have been sent to a mental hospital instead if his court-appointed attorney had presented available evidence to the jury that supported an insanity defense. "His lawyer had no idea there was information available that Romero was completely insane at the time of the crime," contends Nick Trenticosta, who handled Romero's appeals. During the course of his appeals, a lower federal court ruled that Romero had received ineffective counsel at his trial, but a higher appeals court reversed that ruling. Last week Romero died by injection in Huntsville, Texas.

Accused killers don't tend to be attractive people. Quite a few of them, perhaps the overwhelming majority, are guilty. But even the most dubious characters are supposed to get a fair trial, in which their attorneys are equipped to make the best possible case on their behalf. Because the majority of murder defendants are also broke, however, many of them get court-appointed lawyers who lack the resources, experience or inclination to do their utmost. When the Supreme Court restored capital punishment in 1976, it did so in the expectation that death sentences would be imposed in a fair and equitable manner. It hasn't always worked that way. Some people go to traffic court with better prepared lawyers than many murder defendants



## Judy Haney

NOW ON DEATH ROW IN ALABAMA and appealing her 1988 sentence, Judy Haney admits paying her brother-in-law to kill her husband in 1984. Her motive, she says, was more than 15 years of physical abuse. Haney's appeals attorney claims that her court-appointed lawyers at the trial failed to obtain hospital records of treatment for injuries that she says were inflicted by her husband. "If the jury had appreciated the role of the abuse Haney and her children had suffered, it would have been a very strong mitigating factor," says Haney's new attorney, Stephen Bright. A hospital worker initially said such records could not be found; one of the trial attorneys, Gould Blair, finally located them—after the sentencing. During the trial, Blair was held in contempt and jailed for a night after the judge concluded he was intoxicated in court. "This kind of trial has no place in the legal system," says Bright. But since the jury members did not witness Blair's drunkenness and weren't told of it, it could not have influenced their verdict. Blair says he deeply regrets the drinking incident. He insists, however, that Haney undermined her own defense by taking the stand, against his advice, and leaving the impression that she had masterminded the crime. Says he: "She was not underrepresented one damn bit."

get. And yet no case carries higher stakes than a murder trial in the 36 states where the death penalty is legal.

The question of who defends accused killers has become more urgent lately. In a series of recent cases, the Supreme Court has been closing off the paths through which death-row inmates get federal appeals courts to review—and review again—their convictions. That creates more pressure to ensure fair trials in the first place. Perhaps the most serious restriction yet may be handed down in a Virginia case, *Wright v. West*. That case could permit the justices to rule, in effect, that federal appeals judges should work mostly from the assumption that the courtroom rulings of state-level trial judges are correct. The result would be to limit sharply the kind of questions the federal courts can reopen on appeal.

"What the Supreme Court is saying now is states have got remarkably better at guaranteeing certain liberties," says Ira Robbins, a habeas corpus specialist at Washington's American University law school. In the state courthouses, where the trials are held, however, the guarantee of competent counsel looks rather threadbare. Some cities maintain public-defender offices to provide attorneys to indigent defendants. Well-funded offices can often afford attorneys who specialize in criminal law and even capital crimes. But a number of states—including several Southern states with the nation's highest execution rates—use a shakier system of court-appointed lawyers selected from a list of local attorneys. Many are either young attorneys fresh out of school or older ones who ordinarily specialize in the bread-and-butter work of title searches or divorce litigation.

Though appeals courts have been lenient in ruling that defense attorneys have done an adequate job—judges deemed meritless all of Coleman's claims of ineffective assistance by counsel—it's the rare court-appointed lawyer who is skilled in the complexities of capital cases. "This is a highly specialized area of law," says Harold G. Clarke, chief justice of the Georgia Supreme Court, who has reviewed many death sentences. "Even a good criminal lawyer may not have had much, if any, experience in capital cases." Court-appointed attorneys must also be willing to settle for modest fees that rarely cover the cost of a thorough defense. While a private attorney in Atlanta may make upwards of \$75 an hour, court-appointed lawyers in Georgia are paid about \$30 an hour. In Alabama they cannot be paid more than \$1,000 for pretrial preparations. Even if they spend just 500 hours at the task—the U.S. average in 1987 was 2,000—that amounts to \$2 an hour. "The lawyer would be better off going to work at McDonald's," says Stephen Bright, director of the Southern Center for Human Rights.

Many of them are also unhappy to find themselves defending accused killers whose victims may be familiar to their neighbors. Nor does it help to know that, if convicted, their clients will have an incentive to turn against them later. Claims of ineffective counsel are a staple of appeals filings—not only because mediocre lawyering is so common but also because the accusation is a reliable way to gain the attention of appeals courts. That's one reason prosecutors and some defense attorneys scoff at claims that capital-case

## Appeals courts have treated defense lawyers leniently, but it's the rare court-appointed attorney who is skilled in the complexities of capital cases

lawyering is all that bad. "The competency-of-counsel issue has been totally blown out of proportion," says Marvin White Jr., a Mississippi assistant attorney general. "Counsel in the majority of cases has been competent and effective."

That claim is sharply contested by defendants'-rights advocates. "It's not just once in a while that you see a lawyer make a mistake," insists Charles Hoffman, an Illinois public defender who pursues appeals for death-row inmates. "It's over and over and over again." It's easy for inexperienced lawyers to make a mistake. Under the rules established by a 1977 Supreme Court decision, lawyers in a criminal case must recognize potential violations of fair procedure as soon as they take place and raise the objection in court. If they fail to do so during the trial, they may forfeit the chance for their client to raise the issue on appeal. "People talk about criminals often getting off on technicalities," says Hoffman. "Actually, a lot of people are dying because of technicalities."

Some of the worst errors are made during what is called the penalty phase. This is a separate hearing, following a guilty verdict, in which the jury in a capital case must choose between a prison sentence and the death penalty. Prosecutors offer evidence of "aggravating factors" such as excessive cruelty to con-

vince the jury that the convicted killer should be executed. Defense lawyers are supposed to point out "mitigating factors"—evidence of mental disability, for example, or a history of childhood abuse—that might lead a jury to choose life in prison. But tracking down the evidence of a client's past is time-consuming and expensive, often requiring the services of social workers, psychologists and investigators whom poorly funded defenders cannot afford to hire.

Seeking to remedy this problem, the Federal Government recently established 15 death-penalty resource centers around the country. Supported by \$11.5 million a year in federal funds, as well as state matching funds, the centers recruit, train and assist lawyers who handle appeals for convicts on death row. But attorneys from those centers enter only after conviction, not at the trial, where the Supreme Court now requires that most crucial issues be recognized and raised.

Proposals for similar centers to improve lawyering at the trial phase have gone nowhere. Nor do death-penalty opponents see much hope in the idea of "mandatory pro bono," a system that would require all lawyers and firms to donate some time to representing poor defendants. An attorney who ordinarily specializes in corporate cases or real estate, no matter how competent or well trained, would still be at sea amid the complexities of a murder trial. Says Shelly O'Neill, a Reno public defender: "It's like calling a dentist to do a brain surgeon's work."

Some experts say a better reform would be for more states to establish public-defender offices, in rural as well as urban areas, and provide them with sufficient funds. Though the \$2.2 million annual budget of the Reno office, financed by Washoe County, is far from lavish, it is still enough to afford a permanent staff of 19 attorneys, six of whom are qualified by training and substantial trial experience to handle capital cases.

The Reno operation also has access to some of the same resources that local district attorneys rely on. "If we need an expert from Washington to come testify," O'Neill explains, "we can get the funds from the county to bring him or her in." With those advantages, the Reno office has saved three capital defendants from lethal injection in the past two years.

Reno's approach could be duplicated elsewhere. But are budget-strapped states really likely to pour money into better court defense for accused killers? It's hardly a vote getter. And it's not cheap. But neither is capital punishment. If the U.S. wants the death penalty, it will have to pay what it costs to guarantee each defendant the highest level of fairness and equality—or sacrifice its own standards of justice.

—Reported by Sally B. Donnelly/  
Los Angeles and Julie Johnson/Washington

# Lawyers discuss defense strategy

By **JAMES F. McCARTY**

PLAIN DEALER REPORTER

## CLEVELAND

For the past two days, members of Ohio's defense bar met in relative secrecy at the Marriott Cleveland Society Center to talk about subjects that average law-abiding citizens might find hard to stomach.

Topics included how to win new trials for convicts, how to keep convicted killers off death row and how to counter the emotional impact that victims have in the courtroom.

The registration sheet made it clear where this group was coming from: "NO PROSECUTORS ALLOWED" it said in bold letters.

For the last two hours of the seminar, though, the group made an exception.

They invited the chief prosecutors from Cuyahoga, Geauga and Lake counties onto the stage. They mixed in a couple of judges, added a handful of the state's most prominent defense lawyers, then opened the floor for a freewheeling discussion on the hottest issues facing the legal system today.

The only guidelines, said prominent defense lawyer Jay Milano: Don't make speeches and do be confrontational.

He got what he asked for.

The media were bashed and coddled; judges were praised, and criticized as political animals; and victims' rights were promoted and attacked as vigilantism.

"Most of our clients are being convicted in the press," said defense lawyer Gordon Friedman. "You have an obligation to get involved in pretrial publicity."

That approach seems to conflict with a lawyer's rules of ethics and could subject a press-friendly lawyer to bar sanctions, Milano said. But that doesn't make it wrong, Friedman said, pointing out that police and prosecutors routinely parade defendants before the media for public humiliation.

"We're supposed to lay down and be good little people. Unfortunately, your client will be pilloried in the press and you have to do something to counteract that," Friedman said.

A contingent of lawyers attacked that reasoning, arguing that it is better to ignore the press and avoid poisoning the trial.

Defense lawyer Thomas Shaughnessy, who has tried his share of high-profile cases, argued that it is better to go along with the press than to fight it.

"You can't restrain the news media," he said. "You have to start from the jump and stay even with the police, the prosecutors and everyone else."

The group was just warming up. When the subject turned to the role politics play in the courtroom, the discussion brought arrows of accusations.

"You know darn well that politics plays into it because the judges want to stay on the bench and the prosecutors want to hold their jobs," said defense lawyer J. Ross Haffey. "You see it every time they have a sentencing in a packed courtroom with television cameras."

Cuyahoga County Prosecutor Stephanie Tubbs Jones reacted with verve: "That is a serious harangue on my body when you say that. I can't wait till I get you in a courtroom."

Afterward, Jones and Haffey hugged. But not before Milano had stirred the pot a little more.

"Judges would be less than human if they didn't let (politics) affect them," he said.

This time, Cuyahoga County Common Pleas Judge Lillian J. Greene responded: "Then I'm less than human."

**CERTIFICATION OF COUNSEL UNDER  
COMMON PLEAS SUPERINTENDENCE RULE 65**

**JANUARY 1993**

Lead and Appeal	153
Lead	223
Co-Counsel and Appeal	66
Co-Counsel	187
Appeal Only	<u>8</u>
	637

**COUNTIES WITHOUT ANY CERTIFIED COUNSEL (23):**

Ashland	Mercer
Brown	Morrow
Carroll	Noble
Champaign	Paulding
Darke	Perry
Delaware	Pickaway
Hardin	Pike
Harrison	Union
Henry	Vinton
Hocking	Williams
Holmes	Wyandot
Jackson	

**APPENDIX K**

**JUDICIAL COMPLIANCE WITH REPORTING REQUIREMENTS  
OF COMMON PLEAS SUPERINTENDENCE RULE 65**

**JANUARY 1993**

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>
Appointment of Counsel Reports Filed	87	66	50	81	85
Disposition Reports Filed	78	35	34	53	38
No Disposition Report Required*	6	2	2	1	0
Disposition Reports Outstanding	3	29	14	27	47

\*A Disposition Report may not be required if, for example, the case initially is erroneously reported as a capital case, or the counsel named on the report of appointment form are not certified under Rule 65 and new counsel must be appointed and named on a new report form.

**APPENDIX L**