



OHIO PUBLIC DEFENDER COMMISSION

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DATE: July 22, 2016
TO: Ohio Judges, Ohio County Commissioners,
Ohio Judicial College, Ohio State Bar Association,
Local Bar Associations
FROM: Ohio Public Defender Commission
RE: Ohio Administrative Code Standards

MEMO

On December 1, 2015, several amendments to Ohio Administrative Code Chapter [120-1](#) became effective. The Ohio Public Defender Commission adopted these rules pursuant to Ohio Revised Code section [120.03](#), which mandates that the Commission establish rules for the conduct of county public defender offices and appointed counsel systems, including standards of indigence; standards for the qualifications, training, and size of the legal and supporting staff, facilities, and other requirements needed to maintain and operate a public defender office; minimum caseload standards; and minimum qualifications of appointed counsel.

The Commission spent nearly two years thoroughly reviewing and revising OAC 120-1, consulting national standards and experts, considering other states' standards, convening workgroups of public defenders and appointed counsel, and surveying all Ohio judges. The Commission spent considerable time crafting the attorney qualification standards, offering a survey to all appointed counsel and judges; the enacted standards reflect the majority of survey responses and exceed survey responses only in relation to the number of relevant CLE hours required.

Highlights of OAC 120-1 include:

Standards of indigence: Applicants whose gross income is at or below 187.5% of the federal poverty guidelines, who receive poverty-based public assistance, who are committed to a public mental health facility or state prison, or who are children are presumed indigent. Liquid asset amounts that may impact an applicant's indigence have been increased. [120-1-03](#)

Appointment of additional attorney: Two attorneys may be appointed in aggravated murder cases without capital specifications. A second attorney should be appointed as co-counsel in all other cases whenever necessary to protect the rights of the defendant. In juvenile bindover or serious youthful offender cases, two attorneys may need to be appointed in order to meet attorney qualification standards. [120-1-04](#)

Recoupment: Recoupment of some of the expense of providing counsel may be pursued only against applicants whose gross income exceeds 125% of the federal poverty guidelines. Recoupment must be based upon the person's ability to pay, not the cost of services, and cannot attempt to recoup the full cost of appointed counsel, experts, transcripts, or other expenses. [120-1-05](#)

County public defender offices: Public defender attorney salaries must be in parity with compensation received by prosecutors with comparable years in practice. Supporting staff, facilities, equipment, supplies, and other requirements needed to maintain and operate a county public defender office must be substantially equivalent to that provided to the county prosecutor's office. County public defender office budgets must provide for office space, file storage space, and case and document management; adequate research capabilities; computer, recording, and photographic and other equipment; the confidential employment of experts and specialists; supportive services, including secretarial and investigative; and relevant training for attorneys and support staff. [120-1-06](#)

Appointment systems and attorney qualifications: Appointment systems must ensure that appointments are distributed as widely as possible among members of the bar who qualify; have a written application process for inclusion, review, advancement in qualifications, and removal from the list; not require an attorney to join or pay a fee or any organization; and maintain a record of all appointments of counsel, the qualification of counsel, and record of attorneys' refusal to accept appointments. Specific training and experience-based qualifications are outlined for attorneys being appointed to misdemeanor, OVI, felony, life sentence, capital, juvenile, and appellate cases. Charts summarizing these requirements accompany this memo. Attorneys employed full-time by a public defender office that meets all requirements of OAC 120-1-06 are exempted from these qualification requirements. [120-1-10](#)

Contracts with non-profit organizations: Attorneys employed by non-profit organizations must meet the qualifications of OAC 120-1-10. Compensation for attorneys and support staff must be commensurate to that provided for similar work at public agencies. The contract must include adequate funding for the training of attorneys and support staff. [120-1-12](#)

Crafting these standards took time, and the Commission understands that implementing them will also take time. In order to maximize state reimbursement for indigent defense costs, counties should begin making good-faith efforts to comply with OAC chapter 120-1, especially as counties begin budgeting for 2017.

The Commission has directed the Office of the Ohio Public Defender to begin supervising the compliance of county public defender offices and appointed counsel systems with these standards, as mandated by R.C. §[120.04](#)(B)(3). Additional information about the standards can be found on the agency's website, at <http://opd.ohio.gov/Policy-Outreach/Policy-Outreach>.

As you know, the right to counsel is a fundamental part of this country's criminal justice system. Ohio, like nearly all other states, struggles to provide adequate services to fulfill this

constitutional mandate. Several states are facing federal class-action lawsuits as a result. The Ohio Public Defender Commission believes it is imperative that Ohio work to improve the quality of indigent defense services before the state is mandated to do so by a federal court.

Thank you for familiarizing yourself with the new OAC standards governing Ohio's indigent defense system. We look forward to working with you to implement them, to improve Ohio's indigent defense system, and to ensure that all Ohioans' constitutional rights are fully protected.