

**STARK COUNTY COURT OF COMMON PLEAS
CRIMINAL DIVISION**

**GUIDELINES FOR APPOINTMENT OF COUNSEL
FOR INDIGENT DEFENDANTS:
PRE-ARRAIGNMENT & ARRAIGNMENT**

SECTION I. PURPOSES AND GOALS OF POLICY

1. Provide qualified and competent counsel to represent indigent defendants.
2. Maximize use of the Stark County Public Defenders Office to minimize assigned counsel fees.
3. Encourage the private bar to take appointments for felony cases where the Stark County Public Defenders Office has a conflict of interest.
4. Encourage and assist the private bar in joining to pool of death penalty certified counsel.
5. Maintain a standardized appointment system that allocates cases in an equitable manner to the private bar.

ALL JUDGES RETAIN THE INHERENT AUTHORITY TO CONTROL APPOINTMENTS IN THEIR ASSIGNED CASES.

SECTION II. GENERAL REQUIREMENTS AND PROCEDURES

1. Absent a conflict of interest, the Stark County Public Defenders Office will be appointed to all cases where the defendant appears to be indigent. Appointment of private counsel occurs when there is a conflict of interest that prevents representation by the Public Defenders Office.
2. Private attorneys seeking appointments must appear and request consideration for appointment by signing in on the Friday morning arraignment list.
3. Private attorneys seeking appointments must meet the following requirements:
 - a. The attorney meets the minimum state standards for appointments.

Attorneys seeking appointments must review, sign and maintain on file with the Court the "Certification of Compliance With State Standards for Appointment of Counsel on Felony Cases" form.

- b. The assigned judge agrees to the appointment.
 - c. Attorneys seeking appointments must maintain malpractice insurance and be willing to verify same upon demand.
 - d. Attorneys seeking appointments must be in good standing with the bar.
 - e. Attorneys seeking appointments on first and second-degree felonies must pursue death penalty certification under Rule 20 of the Supreme Court Rules of Superintendence for the Courts of Ohio.
- 4. Private attorneys who no longer wish to be on the court appointment list shall provide a written request to the Court asking to be removed from the appointment list.
 - 5. If, after a more detailed financial inquiry, assigned counsel discovers that a defendant does not financially qualify for appointed counsel, it is the obligation of the attorney to bring that fact to the attention of the assigned Judge. If the Judge removes the attorney, it is the attorney's responsibility to request that the appointment be removed from the list tabulating total appointments.
 - 6. Upon request of counsel and for good cause shown, appointments may be made retroactive by the assigned Judge to the date of bindover to the court of Common Pleas to ensure uninterrupted representation between the municipal court probable cause finding and the Common Pleas arraignment.
 - 7. Pursuant to OAC 120-1-10(A)(5), the Court will maintain a year-to-date cumulative list of attorneys receiving appointments and a list of attorneys declining appointments.

SECTION III. APPOINTMENTS FOR THIRD, FOURTH, AND FIFTH DEGREE FELONIES

1. Continuation of Municipal Court Appointments

- a. Municipal court appointments may be continued so long as the attorney appears for the arraignment or has another attorney appear on their behalf to request a continuation of the appointment.

b. Continued municipal court appointments will be included in the number of total appointments for each attorney for purposes of more equitable appointment allocation.

2. Arraignment Assignment Procedures

a. The arraignment Judge or Magistrate will prioritize the appointment list based on the number of prior appointments each attorney present has received. The attorney with the least number of prior appointments will be at the top of the appointment list for that arraignment. If attorneys have an equal number of prior appointments, priority will be given to the first attorney to sign-in. The "prior appointment" list will be reset to zero on January 1st of each year.

b. A cumulative list of attorneys receiving appointments will be maintained by the Court as a matter of public record, as noted above.

c. Appointments for probation violations or extradition hearings will not count on the list of prior appointments.

SECTION IV. APPOINTMENTS FOR FIRST AND SECOND DEGREE FELONIES

1. A separate appointment list will be maintained for private attorneys seeking to obtain or maintain Rule 20 certification to act as counsel in capital cases. Attorneys requesting appointments to obtain experience toward such a goal will be given priority in appointments on first and second degree felony (F1-2) indictments. Attorneys on the F1-2 list are expected to either attend required capital defense seminars or to withdraw their name from the F1-2 list.

2. Pre-Arraignment Screening Procedure

a. Upon filing of an F1-2 indictment, the Clerk of Courts will immediately notify the Court of the pending case.

b. The Court will review the docket to determine if counsel was appointed to represent the defendant at the preliminary hearing.

c. The Court will contact appointed counsel if counsel is on the F1-2 list to confirm that counsel requests a continuing appointment.

- d. If counsel appointed by the municipal court is not on the F1-2 list, new counsel will be contacted for appointment. Counsel will be contacted in the order prescribed by Section III.2.

3. Expand use of Co-Counsel Appointments

To further develop the pool of Rule 20 certified defense counsel, the Judges may exercise the authority to appoint attorneys from the F1-2 list to act as co-counsel on serious felony cases.

SECTION V. APPOINTMENTS FOR MURDER AND AGGRAVATED MURDER CASES

The assigned Judge will be responsible for direct appointment of counsel on all Murder and Aggravated Murder cases. If counsel appointed in municipal court desires a continued appointment, they must contact the assigned Judge prior to the arraignment.

SECTION VI. RECOUPMENT OF INDIGENT DEFENSE COSTS

Attorneys accepting appointments to represent indigent defendants agree to comply with the recoupment of defense costs from indigent defendants pursuant to Ohio Revised Code Sections 120.33(A)(4) and 2941.51(D), and Ohio Administrative Code 120-1-05. Under the OAC, if a person has a gross income exceeding one hundred twenty-five per cent of the federal poverty level but remains unable to financially retain counsel, the appointed attorney will instruct the person of the requirement that they partially reimburse the county for the cost of their representation.

Specifically:

1. Assigned counsel shall notify the Court if a defendant's borderline indigent status warrants recovery of assigned counsel fees in the case.
2. Recoupment of up to \$200.00 per felony case and \$100.00 per misdemeanor case may be ordered by the Court.
3. The recoupment fee is in addition to the \$25.00 application fee contained in O.R.C. Section 120.36.
4. The Court may waive the recoupment fee if it is determined that the imposition of such would result in an undue hardship on the client.
5. The Court will order when the recoupment amount is due.
6. No recoupment will be assessed against an individual whose gross income is less than one hundred and twenty-five per cent of the Federal Poverty level.
7. Enforcement of the recoupment order may not include the option of jail.

8. Counsel agree to instruct their client(s) that the recoupment payment must be made to the Stark County Clerk of Court.

The Stark County Public Defenders Office has their own recoupment policy and procedures; and their policy is independent of this Section concerning assigned counsel.

Copies of proposed recoupment entries are available in the General Division Administration Office.

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