

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. _____ Department or Agency: Office of Indigent Defense Services

Rule No. 355-9-1-.08

Rule Title: Indigent Defense Advisory Boards; Required Attorney Qualifications

X New _____ Amend _____ Repeal _____ Adopt by Reference _____

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? NO

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *M. ...*

Date 9/16/15

(DATE FILED)
(STAMP)

DEPARTMENT OF FINANCE
Office of Indigent Defense Services

NOTICE OF INTENDED ACTION

AGENCY NAME: Department of Finance – Office of Indigent Defense Services

RULE NO. & TITLE:

- (1) 355-9-1-.07 – Employment of Experts, Court Reporters, and Investigators
- (2) 355-9-1-.08 – Indigent Defense Advisory Boards; Required Attorney Qualifications
- (3) 355-9-1-.09 – Recoupment of Attorney Fees

INTENDED ACTION: New Rules for OIDS

SUBSTANCE OF PROPOSED ACTION: The new rules (1) set out the process and requirements for the employment of experts, court reporters, and investigators, (2) reiterates the statutory powers and duties of the Indigent Defense Advisory Boards; establishes the minimum qualifications for representation for each level of offense, (3) set out the basis and amount that may be recouped by OIDS if the court finds the indigent defendant able to pay all or part of the cost of defense paid by the State of Alabama.

TIME, PLACE, MANNER OF PRESENTING VIEWS:


Views on this intended action may be presented by telephone to Mose Stuart at (334) 242-4516. Written views may be submitted to:

Mose Stuart
Department of Finance – Legal Division
Third Floor, State Capitol Building
Montgomery, Alabama 36130
By email: mose.stuart@finance.alabama.gov

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Thursday, November 5, 2014

CONTACT PERSON AT AGENCY: Mose Stuart



Mose Stuart
Senior Associate Counsel

355-9-1-.08 Indigent Defense Advisory Boards; Required Attorney Qualifications.

Act 2011-678 established an Indigent Defense Advisory Board ("the Board") in each judicial circuit. Under the Act, the Board is directed to, among other things, determine the method of delivering indigent defense services to be used in its respective circuit, which methods of delivery may include, but are not limited to, the use of appointed counsel, contract counsel, or public defenders or a combination of any of these. In choosing the method of delivery of indigent defense services for a judicial circuit, the Board "shall select the most efficient and effective counsel system available in each county or circuit, or parts of the county or circuit." (See Code of Ala. 1975, § 41-4-322(d).) In order to provide the most efficient and effective indigent defense services, either by the appointment of counsel by a judge or the selection of counsel under contract by the Board, the following qualifications are mandatory:

(a) Each attorney appointed or selected to provide indigent defense representation must -

1. Be a member in good standing with the Alabama State Bar, and
2. Must complete a minimum of six (6) hours per year of continuing legal education credits, approved by the Alabama State Bar, in criminal law beginning after the attorney is appointed or selected.

(b) **Capital Murder** - to act as **Lead Counsel** in a capital case, the attorney, whether appointed or public defender, must, in addition to the mandatory qualifications in (a) above, possess the following minimum qualifications:

1. Must have at least five (5) years of criminal litigation experience.
2. Must be familiar with the Alabama Rules of Professional Conduct, must be familiar with current criminal practice and procedure in Alabama, must be familiar with capital jurisprudence established by the U.S. Supreme Court and the Supreme Court of Alabama;
3. Must have litigated a capital case to verdict, hung jury, or plea as associate counsel, or have litigated four (4) homicide cases to verdict, hung jury, or plea;
4. Must have substantial familiarity with, and experience in the use of, expert witnesses and scientific and medical evidence in litigation;
5. Must complete at least ten (10) hours of capital defense related continuing legal education every two (2) years.

(c) **Capital Murder** - To act as **Associate Counsel** in a capital case, the attorney, whether appointed or public defender, must in addition to the mandatory qualifications in (a) above, possess the following minimum qualifications:

1. Must have at least three (3) years of criminal litigation experience;
2. Must be familiar with the Alabama Rules of Professional Conduct, must be familiar with current criminal practice and procedure in Alabama, must be familiar with capital jurisprudence established by the U.S. Supreme Court and the Supreme Court of Alabama;
3. Must have participated as trial counsel in at least four (4) jury trials to verdict or hung jury;
4. Must have substantial familiarity with, and experience in the use of, scientific and medical evidence in litigation;

5. Must complete a capital murder seminar every two (2) years.

(d) **Class A Felonies** – To act as defense attorney in a Class A felony case, whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of criminal litigation experience possessed by the attorney;
2. The degree of familiarity with the Rules of Professional Conduct and the current criminal practice and procedure in Alabama; and
3. Whether the attorney has sufficient criminal trial experience in light of the seriousness of criminal charges constituting Class A felonies in Alabama.

(e) **Class B Felonies** - To act as defense attorney in a Class B felony case, whether appointed, contract counsel, or public defender; an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of criminal litigation experience possessed by the attorney;
2. The degree of familiarity with the Rules of Professional Conduct and the current criminal practice and procedure in Alabama; and
3. Whether the attorney has sufficient criminal trial experience in light of the seriousness of criminal charges constituting Class B felonies in Alabama.

(f) **Class C Felonies** - To act as defense attorney in a Class C felony case, whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of criminal litigation experience possessed by the attorney;
2. The degree of familiarity with the Rules of Professional Conduct and the current criminal practice and procedure in Alabama; and
3. Whether the attorney has sufficient criminal trial experience in light of the seriousness of criminal charges constituting Class C felonies in Alabama.

(g) **Juvenile Cases** - To act as defense attorney in a Juvenile case, whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of juvenile litigation experience possessed by the attorney;

2. The degree of familiarity with the Rules of Professional Conduct and the current criminal and juvenile practice and procedure in Alabama possessed by the attorney;
3. Whether the attorney has exhibited proficiency and commitment to providing quality representation to juvenile offenders; and
4. Whether the attorney has completed a minimum of three (3) hours per year of continuing legal education credits, approved by the Alabama State Bar, in juvenile law or practice.

(h) **Guardian Ad Litem (GAL)** - To act as GAL, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The degree of familiarity with the Rules of Professional Conduct and the current criminal and juvenile practice and procedure in Alabama possessed by the attorney;
2. Whether the attorney has completed a minimum of three (3) hours of continuing legal education credits approved by the Alabama State Bar and specifically related to GAL practice; and
3. Whether the attorney has completed GAL training and certification required by the Alabama Administrative Office of Courts (AOC). Said certification must be maintained on a continuous basis as reported by AOC.

(i) **Misdemeanors and Traffic** - To act as defense attorney in a misdemeanor or traffic case, whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The degree of familiarity with the Rules of Professional Conduct and the current criminal practice and procedure in Alabama; and
2. Whether the attorney has exhibited professionalism, proficiency, and commitment to providing quality representation to offenders charged with misdemeanors and traffic offenses.

(j) **Appeals** - To act as defense attorneys in an appeal whether appointed, contract counsel, or public defender, an attorney must meet the qualifications as determined by the person or entity responsible to appoint or select the attorney. In addition to the mandatory qualifications in (a), above, any appointment or selection should take into account the following factors:

1. The amount of appellate experience possessed by the attorney; and
2. The degree of familiarity with the Rules of Appellate Procedure, Rules of Professional Conduct and the current criminal practice and procedure in Alabama.

Author: C. Roberts

Authority: Code of Ala. 1975, § 41-4-322(h).

History: Filed September 16, 2015