

**AMENDMENT TO THE LOCAL RULES  
OF THE SECOND DISTRICT COURT OF APPEALS**

Comments requested: The Second District Court of Appeals will accept public comments until July 22, 2024 on the following amendments to Local Appellate Rule 11 (Appointment of Counsel) and 11.1 (Motions for Approval of Appointed Counsel Fees).

Comments on the proposed amendments should be submitted in writing to the attention of: Jim Nealon, Deputy Court Administrator, Second District Court of Appeals, 41 N. Perry Street, 5th Floor, Dayton, Ohio 45422, or OhioSecondDistrict@mcoho.org. Please include your full name and mailing address in any comments submitted by email.

Key to proposed amendments:

1. Unaltered language appears in regular type. Example: text
2. Language that has been deleted appears in strikethrough. Example: ~~text~~
3. New language that has been added appears in underline. Example: text

Loc.App.R. 11: Appointment of Counsel

(A) Requests for Counsel. Except in appeals taken pursuant to App.R. 5, motions for appointment of counsel in criminal and other limited appeals shall be made in the first instance in the trial court prior to the filing of the notice of appeal. If the motion is denied, deferred, or not resolved in a timely manner, a motion may be filed in the court of appeals, or the court of appeals may appoint counsel sua sponte. A copy of the Office of the Ohio Public Defender's most current Financial Disclosure Form shall be filed at the same time as all motions for appointment of counsel.

(B) Selection of Counsel. The court will maintain a list of qualified attorneys who have applied to and been approved by the court to serve as appointed counsel.

(1) Applications. Applications to be on the court's appointed counsel list are available on the court's website: [www.seconddistrictcoa.org](http://www.seconddistrictcoa.org). When reviewing applications, the court considers the applicant's current standing with the Ohio Supreme Court; experience, training, and qualifications to accept certain types of appointments; and geographic location. The court may, at its discretion, institute additional education and/or training requirements.

(2) Selection Process. In making an appointment, counsel shall be selected in a continual rotation from the list maintained by the court, except that the court will consider the complexity of the case, the experience and expertise of counsel, and any conflicts of interest or other situations that may delay the timely completion of the case or prohibit quality representation to the indigent client.

(3) Review. The court will keep a record of all counsel appointments made in a given year and will review that record periodically to ensure that appointments are equitably distributed among counsel on the appointment list while also taking into consideration the factors listed in section (B)(2).

(C) Appointed Counsel Fees.

(1) Application. Application by appointed counsel for attorney's fees on appeal shall be completed on the most current forms prescribed by the Office of the Ohio Public Defender. Incomplete applications, applications submitted without the proper financial disclosure form, or applications submitted on the wrong forms shall be returned to counsel but may be resubmitted when complete and/or with the proper forms.

(2) Time for Filing. Except in cases where appointed counsel withdraws from representation, all applications for payment of attorney's fees shall be ~~filed with the clerk of the court of appeals~~ submitted to the court's administrative office at 41 N. Perry Street, 5<sup>th</sup> Floor, Dayton, Ohio 45422, within 30 days from the entry of the final judgment or order that disposes of the appeal. In cases where appointed counsel withdraws from representation, applications shall be ~~filed~~ submitted no later than 30 days after counsel withdraws. Untimely applications may result in the reduction or non-payment of fees.

(3) Compensation. The rate of compensation for appointed counsel shall be in accordance with the fee schedule adopted by the county commissioners in the county from which the case arose ~~each of the counties in the Second District~~. Fee schedules are available on the court's website: [www.seconddistrictcoa.org](http://www.seconddistrictcoa.org). Payment for services will not exceed the fee schedules established by each county pursuant to law unless counsel also files a motion for extraordinary fees in the court of appeals with reasons supporting the request, and the extraordinary fee request is approved by the court.

(D) Appeals to the Supreme Court of Ohio. A party wishing to have counsel appointed for purposes of appealing a decision or defending a judgment of this court to the Ohio Supreme Court shall file a motion seeking such appointment.

#### ~~Loc.App.R. 11.1: Motions for Approval of Appointed Counsel Fees~~

~~Motions for Approval of Appointed Counsel Fees and Expenses shall be submitted to the court on a form approved by the auditor of the county in which the appeal was taken. A copy of the entry appointing counsel who submits the motion must be attached to it. If the fee requested exceeds the maximum that has been set pursuant to R.C. 2941.51 by the Board of Commissioners of the county in which the appeal was taken, counsel shall also submit a separate motion for extraordinary fees justifying the request for fees in excess of the county maximum. Counsel must explain the exceptional circumstances involved in the case which warrant the payment of an extraordinary fee.~~