

PROPOSED AMENDMENT TO THE LOCAL RULES
OF THE SECOND APPELLATE DISTRICT

Comments requested: The Second District Court of Appeals will accept public comments until November 9, 2021 on the following proposed amendment to the Local Rules of the Second Appellate District. Specifically, the court of appeals welcomes comments on an amendment to Loc.App.R. 11 that updates the process for the appointment of counsel in criminal and other limited appeals in conformity with Rule 8 of the Rules of Superintendence for the Courts of Ohio.

Comments on the proposed amendment should be submitted in writing to: Jim Nealon, Deputy Court Administrator, Second District Court of Appeals, 41 N. Perry Street, 5th Floor, Dayton, Ohio 45422, or nealonj@mcoho.org not later than November 9, 2021. Please include your full name and mailing address in any comments submitted by email.

Key to Proposed Amendment:

1. Existing language appears in regular type. (Example: text)
2. Existing language to be deleted appears in strikethrough. (Example: ~~text~~)
3. New language to be added appears in underline. (Example: text)

The proposed effective date of this amendment to Loc.App.R. 11 is November 16, 2021.

RULE 11 APPOINTMENT OF COUNSEL ~~IN CRIMINAL APPEALS~~

(A) Requests for Counsel. Except in appeals taken pursuant to App.R. 5, requests for appointment of appellate counsel in criminal cases 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 request is denied or not resolved in a timely manner by the trial court, a motion may be filed in the court of appeals. A copy of the Ohio Public Defender's 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. When reviewing applications, the court considers the applicant's current standing with the Ohio Supreme Court, experience and qualifications to accept certain types of appointments, and geographic location.

(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 take into account 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 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 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 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 each of the counties in the Second District. Fee schedules are available on the court's website: 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 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.