

Faulk, Camilla

From: Christian, Ann [Ann.Christian@clark.wa.gov]
Sent: Monday, October 31, 2011 3:09 PM
To: Faulk, Camilla
Subject: Comments on Suggested Standards for Indigent Defense Services
Attachments: Oregon PDSC AttorneyQualificationStandards05-21-09fillin.pdf

Dear Ms. Faulk:

I appreciate the opportunity to provide comments on the Suggested Standards for Indigent Defense Services. I have reviewed comments submitted to date. I will not comment on certain standards where others have provided comments that mirror or are similar to mine.

1. In her October 10, 2011 letter to the Court, Paula C. Littlewood, WSBA Executive Director, suggests the Court may wish to extend the comment period on the caseload related proposed standards. **I recommend that the proposed Standards 3.3 and 3.4 Caseload Limits and 'Types of Case: General Considerations and Caseload Limits be removed from consideration at this point in time. They and amendments to both standards that have been adopted by the the WSBA Board of Governors (September 22, 2011) should be consolidated and published for comment in the future.** It is difficult at best to comment on proposed standards that one knows are amended in the newest WSBA recommendations. There is no adverse impact of doing so, since the proposed Standards 3.3 and 3.4 would not otherwise be effective until January 1, 2013.

2. Standard 5. Office requirement. The language suggested by the Association of Washington Cities accomplishes the quality assurance concern and accommodates situations where it is not reasonable to require counsel to acquire an office; e.g., conflict representation in Eastern Washington.

3. Standard 14. Qualifications of Attorneys.

a. Death Penalty Representation. Jeffrey Ellis, in his October 19, 2011 comments, notes the shift in emphasis on "quantity" of cases to "quality" of representation under the ABA Death Penalty Guidelines and the SPRC 2 committee. In that vein and based on the limited number of cases tried to a jury in which the death penalty is sought in Washington, **I recommend the i.v. requirement be deleted; i.e., "...served as lead or co-counsel in at least one jury trial in which the death penalty was sought."** Attorneys are otherwise subject to SPRC committee review where the attorney's other experience is evaluated. The mandatory requirement greatly hinders well-qualified counsel who otherwise meets the Standard requirements from consideration by the SPRC 2 committee.

b. All other case types -- I suggest an "equivalency" provision be added.

Pasted below is an example of such an equivalency provision from Oregon's *Public Defense Services Commission Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense* (copy attached to this email).

"Possess significant experience and skill equivalent to or exceeding the qualifications specified below, and who demonstrate to the satisfaction of the Office of Public Defense Services that the attorney will provide competent and adequate representation; or

Work under the supervision of an attorney who does have the requisite qualifications or experience in a public defense organization that certifies to the satisfaction of the Office of Public Defense Services that it will provide oversight of attorney performance, regular attorney trainings, and routine performance reviews in order to ensure competent and adequate representation. On request, an attorney qualifying under this section may be required to provide a written statement explaining why the attorney believes he or she has the qualifications to handle the case types to be assigned to him or her, and be required to provide up to five letters of reference, at least two of which are from judges, attesting to his or her expertise and competence."

Having an equivalency provision, of course, requires someone (court, public defender agency director, etc) to make a determination that an attorney has "equivalent experience." In my experience, having such a provision and attracting attorneys who do not meet the black letter standard benefits the clients, courts and defense community.

I served 15 years as the director of Oregon's statewide indigent defense system (1988-2003). I have now served three years as Clark County's indigent defense coordinator. I appreciate the need to ensure that all public defense clients (criminal and many others) receive quality and effective representation. I also appreciate the difficulty in adopting black letter standards. Finally, I appreciate the difficulty in determining who best ensures quality representation (individual attorneys, courts, WSBA, public defense agency or contract administrators -- or a combination thereof), as well as how best to monitor and enforce compliance with those standards.

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**PUBLIC DEFENSE SERVICES COMMISSION
QUALIFICATION STANDARDS
FOR COURT-APPOINTED COUNSEL TO REPRESENT
FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

Revised 5/21/09

TABLE OF CONTENTS

I.	OBJECTIVE	1
II.	ATTORNEY CASELOADS.....	1
III.	GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS	1
IV.	MINIMUM QUALIFICATIONS BY CASE TYPE	2
1.	Misdemeanor Cases and Misdemeanor Probation Violation Proceedings in Trial Courts	2
2.	Lesser Felony Cases; Felony Probation Violation Proceedings; Contempt Proceedings in Trial Courts	3
3.	Major Felony Cases in Trial Courts	3
4.	Murder Cases in Trial Courts	4
5.	Capital Murder Cases in Trial Courts	4
6.	Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts	7
7.	Juvenile Cases in Trial Courts, Including Delinquency, Waiver Proceedings, Neglect, Abuse, Other Dependency Cases, Status Offenses and Termination of Parental Rights	7
8.	Appeals Other Than in Murder and Capital Murder Cases	9
9.	Appeals in Murder and Capital Murder Cases	10
10.	Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases	11
11.	Post-Conviction Proceedings in Murder and Capital Murder Cases	11
12.	Habeas Corpus Proceedings	12
V.	QUALIFICATION CERTIFICATE AND APPOINTMENT LISTS.....	12
1.	Certificate and Supplemental Questionnaire.....	12

2.	Submission Requirements	12
3.	Supporting Documentation.....	13
4.	Approval for Appointment	13
5.	Suspension From Appointment.....	14

EXHIBIT A PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION

**PUBLIC DEFENSE SERVICES COMMISSION
QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL
TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

The following standards are adopted by the Public Defense Services Commission pursuant to ORS 151.216(1)(f)(F).

STANDARD I: OBJECTIVE

The objective of these standards is to ensure the provision of competent and adequate legal representation to all financially eligible persons entitled to court-appointed counsel by state or federal constitution or statute.

STANDARD II: ATTORNEY CASELOADS

Attorneys appointed to represent financially eligible persons at state expense must provide competent and adequate representation to each client. Neither defender organizations nor assigned counsel shall accept workloads that, by reason of their size or complexity, interfere with providing competent and adequate representation or lead to the breach of professional obligations.

STANDARD III: GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS

Subject to the provisions of Standard V, the appointing authority shall appoint only those attorneys who:

1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Either:
 - A. Meet the minimum qualifications specified in Standard IV for the applicable case type; or
 - B. Possess significant experience and skill equivalent to or exceeding the qualifications specified below, and who demonstrate to the satisfaction of the Office of Public Defense Services that the attorney will provide competent and adequate representation; or
 - C. Work under the supervision of an attorney who does have the requisite qualifications or experience in a public defense organization that certifies to the satisfaction of the Office of Public Defense Services that it will provide oversight of attorney performance, regular attorney trainings, and routine performance reviews in order to ensure competent and adequate representation. On request, an attorney qualifying under this section may be required to provide a written statement explaining why the attorney believes he or she has the qualifications to handle the case types to be

assigned to him or her, and be required to provide up to five letters of reference, at least two of which are from judges, attesting to his or her expertise and competence.

3. Have adequate support staff or answering service/machine and email capability to ensure reasonable and timely personal and telephonic contact between attorney and client, and between the court and attorney;
4. Have adequate legal research access through an online service or other electronic means or by being located near a law library of sufficient size to ensure the attorney has ready access to legal references and research material; and
5. Have read, understood and agree to observe applicable provisions of the current edition of the Oregon State Bar's Performance Standards for Counsel in Criminal, Delinquency, Dependency, Civil Commitment, and Post-Conviction Relief Cases, available at www.osbar.org.

STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE

1. Misdemeanor Cases, Contempt and Misdemeanor Probation Violation Proceedings in Trial Courts

The minimum qualifications for appointment to misdemeanor and contempt cases and misdemeanor probation violation proceedings require that an attorney:

- A. Has reviewed and is familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases; the Oregon Rules of Professional Conduct; the Criminal, Vehicle and Evidence Codes of Oregon; the criminal drug offenses, and other crimes outside the Criminal Code; the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies at least one of the following:
 - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of a public defender office, a district attorney office, or a private attorney office in criminal cases; has undertaken such representation for at least six months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable criminal procedure and sentencing alternatives;
 - b. Has observed five complete trials of criminal cases that were tried to a jury;
 - c. Has served as counsel or co-counsel in at least two criminal cases that were tried to a jury;
 - d. Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at court appearances and client interviews in each case;
 - e. Has served as a judicial clerk for at least six months in a court that regularly conducts criminal trials;

- f. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

2. Lesser Felony Cases and Felony Probation Violation Proceedings in Trial Courts

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment to lesser felony cases and felony probation violation proceedings require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 1;
- B. Has met the qualifications in Standard IV, section 1 for at least nine months;
- C. Has served as counsel or as co-counsel in two criminal cases that were tried to a jury;
- D. In at least one felony case tried to a jury, has served as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards; and
- E. On request, can present an additional showing of expertise and competence in the area of criminal trial practice by submitting at least three letters of reference from other criminal trial lawyers or judges the attorney has appeared before on criminal cases. The letters must explain why the attorney has the requisite experience and competence to handle felony cases involving potential incarceration of up to five years.

3. Major Felony Cases in Trial Courts

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than murder and capital murder cases.

The minimum qualifications for appointment to major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has met the qualifications in Standard IV, section 2 for at least nine months and has had at least nine months experience representing clients in lesser felony cases; and
- C. On request, can present evidence of additional expertise and competence in the area of criminal trial practice by submitting at least five letters of reference from other criminal trial lawyers or judges that the attorney has appeared before on criminal cases. The letters must explain why the attorney has the requisite experience and competence to handle felony cases involving potential incarceration of 25 years or more.

4. Murder Cases in Trial Courts

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in murder cases, not including capital murder, require that an attorney:
- a. Meets the qualifications specified in Standard IV, section 3;
 - b. Has met the qualifications in Standard IV, section 3 for at least three years;
 - c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent and adequate representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, psychiatric issues and scientific evidence;
 - d. Has acted as lead counsel or co-counsel in at least five major felonies tried to a jury, which include at least one homicide case that was tried to a jury; and
 - e. On request, can demonstrate the above by:
 - (1) A written statement explaining why the attorney believes that he or she has the qualifications required to handle a murder case; and
 - (2) Written statements from those with direct knowledge of the attorney's practice declaring that they believe that the attorney should be allowed to defend murder cases and explaining why the attorney has the qualities required. Written statements must include at least five letters from persons in at least two of the following three groups:
 - i. Judges before whom the attorney has appeared;
 - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; and
 - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, c, and e or must possess significant equivalent experience under Standard III, section 2.B.

5. Capital Murder Cases in Trial Courts

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in capital murder cases require that an attorney:
- a. Has reviewed and is familiar with the current version of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases,

and the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases;

- b. Meets the qualifications specified in Standard IV, section 4.A;
- c. Has represented clients in major felony cases for at least five years;
- d. Has acted as lead counsel or co-counsel in at least five major felony cases tried to a jury, which include at least one murder case that was tried to a jury.
- e. Has completed or, prior to trial will have completed, comprehensive training in the defense of capital cases. Such training should include, but not be limited to, training in the following areas:
 - (1) relevant state, federal, and international law;
 - (2) pleading and motion practice;
 - (3) pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
 - (4) jury selection;
 - (5) trial preparation and presentation, including the use of experts;
 - (6) ethical considerations particular to capital defense representation;
 - (7) preservation of the record and of issues for appellate and other post-conviction review;
 - (8) counsel's relationship with the client and his or her family;
 - (9) post-conviction litigation in state and federal courts;
 - (10) the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.
- f. Has attended and successfully completed within the last two years at least 18 hours of specialized training on current issues in capital cases through an established training program awarding CLE credits;
- g. Has demonstrated to persons with direct knowledge of his or her practice:
 - (1) a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
 - (2) substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
 - (3) skill in the management and conduct of complex negotiations and litigation;

- (4) skill in legal research, analysis, and the drafting of litigation documents;
- (5) skill in oral advocacy;
- (6) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
- (7) skill in the investigation, preparation and presentation of evidence bearing upon mental status;
- (8) skill in the investigation, preparation, and presentation of mitigating evidence;
- (9) skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and

h. On request, can demonstrate all of the above by:

- (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
- (2) Written statements from those with direct knowledge of the attorney's practice, declaring that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Written statements must include at least five letters from persons in at least two of the following three groups:
 - i. Judges before whom the attorney has appeared;
 - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
 - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.

B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, c, e, f, g and h or must possess significant equivalent experience under Standard III, section 2.B.

C. *Procedure for Establishing Equivalent Skill And Experience In Capital Murder Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital cases. For qualification under this paragraph, attorneys:

- a. must be prescreened by a panel of experienced capital murder attorneys to determine whether the attorney will provide competent representation; and

- b. must have either:
 - (1) specialized training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).
- D. *Caseload.* An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

6. Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts

The minimum qualifications for appointment in civil commitment proceedings under ORS Chapters 426 and 427 require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has handled at least three civil, juvenile or criminal cases in which a psychiatric or psychological expert was consulted by the attorney and the use of psychiatric or psychological evidence was discussed with the client;
- C. Has knowledge of available alternatives to institutional commitment;
- D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and mentally retarded; and,
- E. Satisfies one of the following:
 - a. has served as co-counsel in two civil commitment cases that have been submitted to a judge for determination; or
 - b. has observed five civil commitment hearings that have been submitted to a judge for determination.

7. Juvenile Cases in Trial Courts, Including Delinquency, Waiver Proceedings, Neglect, Abuse, Other Dependency Cases, Status Offenses and Termination of Parental Rights

The minimum qualifications for appointment to juvenile cases, under ORS Chapter 419, require that an attorney:

- A. For all cases, has knowledge of juvenile justice statutes, case law, standards, and procedures; is generally familiar with services available to children and parents in the juvenile system; and has reviewed and is familiar with the following materials:
 - a. Oregon Revised Statutes, Chapters 419A, 419B, and 419C, Oregon Juvenile Code.

- b. Oregon Revised Statutes, Chapter 417, Interstate Compact on Juveniles and the Community Juvenile Services Act.
 - c. Oregon Revised Statutes, Chapter 418, Child Welfare Services.
 - d. Oregon Revised Statutes, Chapter 420, Youth Correction Facilities; Youth Care Centers; and Chapter 420A, Oregon Youth Authority; Youth Correction Facilities, and applicable administrative rules.
 - e. Oregon State Bar, Juvenile Law, (current version).
 - f. Pub. L. 105-89, Adoption and Safe Families Act of 1997.
 - g. Pub. L. 95-608, Indian Child Welfare Act of 1978, 25 USC §§1901-1963 (1982) and Refugee Child Act, ORS 418.925-418.945.
 - h. Pub. L. 105-17 Individuals with Disabilities Education Act.
 - i. Pub. L. 93-112, Title V §504, Rehabilitation Act of 1973, as amended, 20 USC §794 (1982).
- B. For juvenile delinquency cases, meets the qualifications for the equivalent adult crimes specified in Standard IV, sections 1-4; and satisfies at least one of the following:
- a. has served as counsel or co-counsel in at least two juvenile delinquency cases adjudicated after a contested hearing before a judicial officer which involved alleged conduct at an offense level at least as serious as the level of qualification certified; or
 - b. has observed at least five juvenile delinquency cases adjudicated after a contested hearing before a judicial officer which involved alleged conduct at an offense level at least as serious as the level of qualification certified.
- C. For status offense cases, meets the qualifications specified in Standard IV, section 1;
- D. For dependency cases, meets the qualifications specified in Standard IV, section 2; or has had equivalent experience, civil or criminal, involving complicated child-custody issues. In addition, the attorney satisfies at least one of the following:
- a. has served as counsel or co-counsel in at least two dependency cases adjudicated before a judge or
 - b. has observed at least five dependency cases adjudicated before a judge.
- E. For waiver proceedings, meets the qualifications specified in Standard IV, section 3. Where the underlying offense is equivalent to adult murder or capital murder, the attorney must meet the qualifications specified in Standard IV, sections 4 and 5, respectively. In addition, the attorney satisfies one of the following:

- a. has served as counsel or co-counsel in at least two delinquency cases adjudicated before a judge which involved alleged conduct at or above the major felony level; or
 - b. has observed, or reviewed transcripts in, at least two contested waiver hearings which involve alleged conduct at or above the major felony level;
- F. For termination of parental rights cases, meets the qualifications specified in Standard IV, section 3, or has had equivalent experience, civil or criminal, involving complicated child-custody issues. In addition, the attorney satisfies at least one of the following:
 - a. has served as counsel or co-counsel in at least two termination of parental rights cases submitted to a judge for determination; or
 - b. has observed, or reviewed the transcripts of, at least two termination of parental rights cases submitted to a judge for determination.

For purposes of this section, a court trial in a delinquency case is equivalent to a jury trial under Standard IV, sections 1-3.

8. Appeals Other Than in Murder and Capital Murder Cases

The minimum qualifications for appointment in appeals other than in murder and capital murder cases require that an attorney:

- A. Has reviewed and is familiar with:
 - a. ORS 138.005 - 138.504 in the case of appeals of criminal cases;
 - b. Oregon State Bar, Criminal Law (current edition) in the case of appeals of criminal cases;
 - c. ORS 419A.200 - 419A.211 and ORS Chapter 19 in the case of appeals of juvenile cases;
 - d. Oregon State Bar, Juvenile Law, (current edition), in the case of appeals of juvenile cases;
 - e. The Oregon Rules of Appellate Procedure;
 - f. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
 - a. Has experience as appellate counsel, either in practice or under the Oregon Supreme Court's Law Student Appearance Program commensurate with the seriousness of the underlying case;

- b. Has served as co-counsel in at least two appellate cases which were briefed on the merits and argued to the court under the supervision of an attorney eligible for appointment to appellate cases under this standard;
- c. Has observed oral argument and reviewed the appellate record in at least five appellate cases, at least one of which was an appeal from conviction of a major felony or murder;
- d. Has significant experience in motion practice and arguments in state circuit court or federal district court;
- e. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

9. Appeals in Murder and Capital Murder Cases

The minimum qualifications for appointment in appeals in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the proficiency and commitment necessary for high quality representation in:
 - a. Capital murder cases if the appeal is in a capital case; or
 - b. Other murder cases, if the appeal is in a noncapital murder case;
- D. Has demonstrated proficiency in appellate advocacy in felony defense;
- E. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- F. For co-counsel in capital murder appeals and for lead or co-counsel in other murder cases, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- G. *Alternate Procedures for Establishing Equivalent Skill And Experience in Capital Appeals.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital appeals. For qualification under this paragraph, attorneys:

- a. must be prescreened by a panel of experienced capital murder attorneys to determine whether the attorney will provide competent representation; and
- b. must have either:
 - (1) specialized training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

10. Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases

The minimum qualifications for appointment in post-conviction proceedings in cases other than murder and capital murder cases require that an attorney:

- A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the post-conviction proceeding;
- B. Has reviewed and is familiar with:
 - a. The Oregon Post-Conviction Hearing Act, ORS 138.510-138.686, and
 - b. The Oregon State Bar's performance standards for counsel representing petitioners in post-conviction relief proceedings, and the authorities cited therein.
- C. Has served as co-counsel or observed proceedings and reviewed the record in at least two post-conviction relief proceedings in which a trial court entered a judgment on the petition.
- D. Has attended and completed a legal education and training program on post-conviction relief proceedings within two years prior to appointment.

11. Post-Conviction Proceedings in Murder and Capital Murder Cases

The minimum qualifications for appointment in post-conviction proceedings in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. Meets the qualifications specified in Standard IV, section 10;
- C. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- D. For capital murder cases, meets the qualifications specified in Standard IV, section 5 for co-counsel in capital cases in the trial courts. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 5.

- E. *Alternate Procedures Establishing Equivalent Skill And Experience in Post-Conviction Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital murder cases. For qualification under this paragraph, attorneys:
- a. must be prescreened by a panel of experienced capital murder attorneys to determine whether the attorney will provide competent representation; and
 - b. must have either:
 - (1) specialized training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

12. Habeas Corpus Proceedings

The minimum qualifications for appointment in habeas corpus proceedings require that an attorney meet the qualifications specified in Standard IV, section 2.

STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT OF COUNSEL

1. Certificate and Supplemental Questionnaire

In order to receive an appointment to represent a financially eligible person at state expense, an attorney must submit a certificate of qualification together with a completed supplemental questionnaire, and be approved by the Office of Public Defense Services for appointment to the case type for which the appointment will be made. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards. An attorney who submitted a certificate prior to March 1, 2007 is not required to submit a new certificate unless the attorney seeks to accept appointment to cases not covered by a previous certificate, or unless submitting a new contract for execution.

2. Submission Requirements

- A. *Contract Attorneys.* Contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the execution of the contract and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.

- B. *Assigned Counsel (for all Non-contract Appointments).* Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

3. Supporting Documentation

- A. An attorney must submit supporting documentation in addition to the certificate and questionnaire:
 - a. At the request of OPDS; or
 - b. When the attorney seeks to qualify for appointments based on equivalent skill and experience.
- B. Contract providers seeking to qualify attorneys pursuant to the Public Defense Organization provision of Standard III, section 2.C, shall submit prior to execution of its contract with OPDS and update as necessary:
 - a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;
 - b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;
 - c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 2.C, signed by an authorized representative of the organization that states the type of cases for which the attorney is eligible to receive appointment; and
 - d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 2.C, completed and signed by each attorney.

4. Approval for Appointment

- A. *Review of Submitted Certificates.* OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications for a case type will be approved for appointment to cases of that type. OPDS's goal is to select attorneys who:
 - a. are more than minimally qualified,
 - b. have specialized skills needed in a particular community,
 - c. are available to cover cases in the appropriate geographic area,

- d. are able to meet specific needs of the court such as availability at specific times,
- e. are both effective and efficient, and/or
- f. have other qualities that would benefit the court, the clients or OPDS.

At the completion of the review, OPDS shall notify the attorney of the case types for which the attorney has been approved for appointment and the reason for its decision not to approve the attorney for appointment in any case type for which certification was submitted.

- B. *Request for Reconsideration.* An attorney who is not approved for appointment in case types for which the attorney has certified qualification may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of approval/disapproval for appointment in particular case types, additional information, including supporting documents, if any, which the attorney believes demonstrates that the attorney meets the criteria for selection set forth in Paragraph 4.A.
- C. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. OPDS shall notify the attorney of its final determination.
- D. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.
- E. *Provision of Lists to the Courts.* OPDS will prepare an applicable list of attorneys approved for appointment for each county. The list will be sorted by case type and, within each case type, alphabetically by attorney name.
- F. *Updating Lists.* OPDS will update lists as necessary.

5. Suspension From Appointment

- A. *Suspension from Future Appointments.* If OPDS obtains information that calls into question an attorney's ability to provide adequate assistance of counsel, OPDS shall notify the attorney of the information and shall perform such investigation as is necessary to determine whether the attorney is able to provide adequate assistance of counsel. After completing its investigation and reviewing any information provided by the attorney OPDS shall have authority to suspend the attorney from future appointments for any or all case types until OPDS is satisfied that the attorney is able to provide adequate assistance of counsel. When OPDS suspends an attorney from future appointments OPDS shall notify the attorney and the court of the suspension and the reason(s) for the suspension.
- B. *Suspension from Current Appointments.* The court, after reviewing the reason(s) for the suspension, shall consider whether the attorney should be relieved as counsel in any pending court-appointed cases. The court shall consider with respect to each open case: the reason for the suspension, the needs of the client, and the ability of the attorney to provide adequate assistance of counsel under all of the

circumstances. The court shall comply with the Paragraph 1.7 of OPDS's Public Defense Payment Policies and Procedures relating to substitution of counsel.

- C. *Request for Reconsideration.* An attorney who is suspended from future appointments may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of suspension, additional information, including supporting documents, if any, which the attorney believes establish the attorney's ability to provide adequate assistance of counsel.
- D. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration, the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. In reviewing the request the executive director or the executive director's designee may select and empanel a group of public defense attorneys to advise the executive director about the attorney's ability to provide adequate assistance of counsel and whether the attorney should be suspended from future appointment for any or all case types. OPDS shall notify the attorney and the court of its final determination and the reasons for its final determination.
- E. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION

Name: _____

Bar Number: _____

Address: _____

Email: _____

Foreign language fluency in: _____

Phone Number: _____

Years of Experience: _____

Fax Number: _____

Practice of Law _____ Criminal _____

Cell/Pager: _____

Juvenile _____ Appellate _____

For appointments in the following county(ies): _____

TRIAL LEVEL

Capital Murder
Lead Counsel ☐
Co-counsel ☐

Murder
Lead Counsel ☐
Co-counsel ☐

Major Felony ☐
Lesser Felony ☐
Misdemeanor ☐

Juvenile Delinquency
Major Felony ☐
Lesser Felony ☐
Misdemeanor ☐
Juvenile Dependency ☐
Juvenile Termination ☐

Civil Commitment ☐
Contempt ☐
Habeas Corpus ☐

Post-Conviction Relief
Capital Murder ☐
Murder ☐
Other Criminal ☐

APPELLATE LEVEL

Capital Murder
Lead Counsel ☐
Co-counsel ☐

Murder
Lead Counsel ☐
Co-counsel ☐

Major Felony ☐
Lesser Felony ☐
Misdemeanor ☐

Juvenile Delinquency
Major Felony ☐
Lesser Felony ☐
Misdemeanor ☐
Juvenile Dependency ☐
Juvenile Termination ☐

Civil Commitment ☐
Contempt ☐
Habeas Corpus ☐

Post-Conviction Relief
Capital Murder ☐
Murder ☐
Other Criminal ☐

Please check only one box below:

☐ I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. 5-21-09) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 2.B, I have submitted supporting documentation and explained how I am qualified for those case types.

or

☐ I certify that the above-named attorney will be working at a public defense organization as described in Standard III.2.C, which has provided the information required under Standard V.3.B.

Signature

Date

Submit signed certificates together with the supplemental questionnaire
and any supporting documentation to: mail@opds.state.or.us

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:
5. Number of years and location(s) of legal practice outside Oregon:
6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)
7. What percentage of your present practice involves handling public defense cases?
8. Briefly describe the nature and extent of your work experience in the area(s) of law which you have certified and any related areas of law.
9. Before which courts and judges have you regularly appeared in case proceedings which you have certified?
10. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?
11. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.
12. List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.

13. Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)
14. Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.
15. Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?
16. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.
17. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

SIGNATURE

DATE