

**PROPOSED AMENDMENTS TO THE RULES OF SUPERINTENDENCE
FOR THE COURTS OF OHIO**

Comments Requested: The Supreme Court of Ohio will accept public comments until December 24, 2015, on the following proposed amendments to the Rules of Superintendence for the Courts of Ohio.

Comments on the proposed amendments should be submitted in writing to: Tasha Ruth, Manager of Case Management Section, Supreme Court of Ohio, 65 South Front Street, 6th Floor, Columbus, Ohio 43215-3431, or Tasha.Ruth@sc.ohio.gov not later than December 24, 2015. Please include your full name and mailing address in any comments submitted by e-mail.

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

46 **(B) Local rule**

47
48 (1) Each court or division of a court shall adopt a local rule ~~of court~~ governing
49 appointments made ~~by~~ in the court or division. ~~The~~

50
51 (2) The local rule required by division (B)(1) of this rule shall include all of the
52 following:

53
54 (1) ~~A(a)~~ For appointments frequently made in the court or division, a
55 procedure for selecting appointees from a list maintained by the court or division
56 of persons ~~qualified~~ pre-qualified to serve in the capacity designated by the court
57 or division. The procedure shall ensure an equitable distribution of appointments
58 among all persons on the appointment list. ~~The~~ To ensure an equitable distribution
59 of appointments, the court or division may ~~consider the skill and expertise of the~~
60 appointee in the designated area of the appointment and the management by the
61 appointee of his or her current caseload utilize a rotary system from a graduated list
62 that pairs the seriousness and complexity of the case with the qualifications and
63 experience of the person to be appointed. The court or division may maintain
64 separate lists for different types of appointments.

65
66 (2)(b) A procedure by which all appointments made ~~by~~ in the court or division are
67 reviewed periodically to ensure the equitable distribution of appointments ~~among~~
68 ~~persons on each list maintained by the court or division;~~

69
70 (3)(c) ~~The manner of compensation and rate at which persons appointed~~
71 appointees will be compensated receive for services provided and expenses
72 incurred as a result of the appointment, including, if applicable, a fee schedule.

73
74 ~~(C)~~(3) The local rule required by division (B)(1) of this rule may include qualifications
75 the following:

76
77 (a) Qualifications established by the court or division for inclusion on the
78 appointment list, ~~the;~~

79
80 (b) The process by which persons are added to or removed from the
81 appointment list, and other;

82
83 (c) Other provisions considered appropriate by the court or division.

84
85 **(C) Factors in making appointments**

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87 In making appointments, a court or judicial officer shall take into account all of the
88 following:

89
90 (1) The anticipated complexity of the case in which appointment will be made;

139 three general items that must be included in each local appointment rule. Together with division (C)(B)(3),
140 division (B) provides courts and divisions with flexibility as to the specific content of the local rule in
141 recognition of the different types of appointments that are made in various courts and divisions.
142

143 The rule contemplates that each court or division will maintain a list from which appointments will
144 be made. Lists of potential appointees would be required only for appointments frequently made by in a
145 court or division, such as the appointment of counsel in criminal cases. However, a list would not be
146 required for appointments rarely made by in the court or division, such as the appointment by a probate
147 court of an appraiser for a rare art collection.
148

149 ~~Division (D) requires that a notice of appointment and regular fee and expense statements be~~
150 ~~provided to a party or other person who is required to pay all or a portion of an appointee's fees. This~~
151 ~~requirement may be satisfied with service upon counsel of record as provided in the applicable rules of~~
152 ~~procedure. If a criminal defendant is required, as a condition of probation, to repay all or part of the costs~~
153 ~~of indigent defense, notice under this division is not required.~~
154

155 ~~The rule does not apply to the appointment of "acting judges" pursuant to R.C. 1901.10, 1901.12,~~
156 ~~or 1907.14 or to the appointment of attorneys pursuant to a contractual arrangement, such as with a multi-~~
157 ~~county public defender program.~~
158

159 **Commentary ([Effective date])**

160
161
162 The 2015 amendments to this rule primarily address questions that have arisen about appointment
163 of counsel for indigent criminal defendants, but in key respects also apply to all court appointments. The
164 amendments are intended to make the following clarifications:
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- 166 • The rule does not apply to appointments made by a public defender office or other entity outside
167 the control of a court or judicial officer;
168
- 169 • The rule applies to post-sentencing selection by a court or judicial officer;
170
- 171 • That all applicable ethical and campaign finance restrictions and requirements in Ohio's Judicial
172 Conduct Rules apply to every appointment made by a court or judicial officer;
173
- 174 • That the appointment system used by courts or divisions ensures the equitable distribution of
175 appointments, but does not require a blind rotation system among all those available for
176 appointment or a substantially equal number of appointments to everyone on an appointment list.
177 The goal of equitable distribution is to distribute appointments as widely as reasonably possible
178 among available appointees, but without limiting the discretion used in individual courts and
179 individual cases. Studies show the availability of potential appointees across the state varies
180 widely and that a large majority of responding judges seek to maintain their discretion in making
181 appointments. As has been true for nearly two decades, individual courts remain obligated to adopt
182 an appointment system by local rule. In addition, this amendment clarifies that all appointments are
183 to be made in an objectively rational, fair, neutral and nondiscriminatory manner even though
184 judicial officers may take into account many factors including the complexity of individual cases,
185 special needs of a party, avoidance of conflicts of interest, time constraints in a case, and the
186 judicial officer's experience with a potential appointee and perception of their commitment to
187 providing quality representation to each client.