

**AMENDMENTS TO THE SUPREME COURT
RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO**

The following amendments to the Rules of Superintendence for the Courts of Ohio (Sup.R. 8) were adopted by the Supreme Court of Ohio. The history of these amendments is as follows:

November 23, 2015	Published for public comment
December 13, 2016	Final adoption by conference
January 1, 2017	Effective date of amendments

RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

RULE 8. Court Appointments.

(A) Definitions

As used in this rule:

(1) “Appointment” means the selection by a court or judicial officer of any person or entity designated pursuant to constitutional or statutory authority, rule of court, or the inherent authority of the court to represent, act on behalf or in the interests of another, or perform any services in a court proceeding. The term “appointment” does not include the selection by a court or judicial officer of the following:

(a) An acting judge pursuant to R.C. 1901.121(A)(2)(a), (B)(1), or (C)(1) or R.C. 1907.141(A)(2)(a), (B)(1), or (C)(1);

(b) A receiver pursuant to R.C. 2735.01;

(c) An arbitrator, mediator, investigator, psychologist, interpreter, or other expert in a case following independent formal or informal recommendations to the court or judicial officer by litigants;

(d) Any individual who is appointed by any court pursuant to the Revised Code or the inherent authority of the court to serve in a non-judicial public office for a full or unexpired term or to perform any function of an elected or appointed public official for a specific matter as set forth in the entry of appointment;

(e) A guardian ad litem pursuant to Sup.R. 48;

(f) A guardian pursuant to Sup.R. 66.

(2) “Appointee” means any person, other than a court employee, receiving an appointment by a court or judicial officer. “Appointee” does not include a person or entity who is selected by someone other than the court.

(3) “Equitable distribution” means a system through which appointments are made in an objectively rational, fair, neutral, and nondiscriminatory manner and are widely distributed among substantially all persons from the list maintained by the court or division of persons pre-qualified for appointment.

(4) “Judicial officer” means a judge or magistrate.

(B) Local rule

(1) Each court or division of a court shall adopt a local rule governing appointments made in the court or division.

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

(a) For appointments frequently made in the court or division, a procedure for selecting appointees from a list maintained by the court or division of persons pre-qualified to serve in the capacity designated by the court or division. The procedure shall ensure an equitable distribution of appointments. To ensure an equitable distribution of appointments, the court or division may utilize a rotary system from a graduated list that pairs the seriousness and complexity of the case with the qualifications and experience of the person to be appointed. The court or division may maintain separate lists for different types of appointments.

(b) A procedure by which all appointments made in the court or division are reviewed periodically to ensure the equitable distribution of appointments;

(c) If not addressed by the Revised Code or Supreme Court rule, the compensation appointees will receive for services provided and expenses incurred as a result of the appointment, including, if applicable, a fee schedule.

(3) The local rule required by division (B)(1) of this rule may include the following:

(a) Qualifications established by the court or division for inclusion on the appointment list;

(b) The process by which persons are added to or removed from the appointment list;

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

(C) Compensation review and report

At least once every five years, each court or division of a court shall review the compensation paid court appointees to determine the compensation's adequacy and effect upon the availability of court appointments. The court or division shall provide the report to all funding authorities of the court or division.

(D) Factors in making appointments

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

- (1) The anticipated complexity of the case in which appointment will be made;
- (2) Any educational, mental health, language, or other challenges facing the party for whom the appointment is made;
- (3) The relevant experience of those persons available to accept the appointment, including proficiency in a foreign language, familiarity with mental health issues, and scientific or other evidence issues;
- (4) The avoidance of conflicts of interest or other situations that may potentially delay timely completion of the case;
- (5) Intangible factors, including the court or judicial officer's view of a potential appointee's commitment to providing timely, cost-effective, quality representation to each prospective client.

(E) Payment of fees

(1) Except as provided in division (E)(2) of this rule, if a party or other person is required to pay all or a portion of the fees payable to an appointee, the appointee promptly shall notify that party or person of the appointment and the applicable fee schedule. The court or division shall require the appointee to file with the court or division and serve upon any party or other person required to pay all or a portion of the fees itemized fee and expense statements on a regular basis as determined by the court or division. If the party or other person required to pay all or a portion of the fees claims that the fees are excessive or unreasonable, the burden of proving the reasonableness of the fees is on the appointee.

(2) Division (E)(1) of this rule shall not apply to the repayment of all or part of the costs of indigent defense by a criminal defendant as a condition of probation.

(3) The notification requirement of division (E)(1) of this rule may be satisfied with service upon counsel of record as provided in the applicable rules of procedure.

(F) Code of Judicial Conduct

In making appointments, a court or judicial officer shall conform to all applicable ethical and campaign finance restrictions and requirements of the Ohio Code of Judicial Conduct.

(G) Effect of inclusion on appointment list

Persons on a list maintained by the court or division of persons pre-qualified to serve are not assured a substantially equal number of appointments. No person is granted a legal right or claim by virtue of this rule.

Commentary (July 1, 1997)

Rule 8 requires each court or division of a court to adopt a local rule outlining the procedures to be followed within the court or division for making court appointments. Division (B)(2) of the rule specifies three general items that must be included in each local appointment rule. Together with division (B)(3), division (B) provides courts and divisions with flexibility as to the specific content of the local rule in recognition of the different types of appointments that are made in various courts and divisions.

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

Commentary (January 1, 2017)

The 2017 amendments to this rule primarily address questions that have arisen about appointment of counsel for indigent criminal defendants, but in key respects also apply to all court appointments. The amendments are intended to make the following clarifications:

- The rule does not apply to appointments made by a public defender office or other entity outside the control of a court or judicial officer;
- The rule applies to post-sentencing selection by a court or judicial officer;
- That all applicable ethical and campaign finance restrictions and requirements in Ohio's Judicial Conduct Rules apply to every appointment made by a court or judicial officer;
- That the appointment system used by courts or divisions ensures the equitable distribution of appointments, but does not require a blind rotation system among all those available for appointment or a substantially equal number of appointments to everyone on an appointment list. The goal of equitable distribution is to distribute appointments as widely as reasonably possible among available appointees, but without limiting the discretion used in individual courts and individual cases. Studies show the availability of potential appointees across the state varies widely and that a large majority of responding judges seek to maintain their discretion in making appointments. As has been true for nearly two decades, individual courts remain obligated to adopt an appointment system by local rule. In addition, this amendment clarifies that all appointments are to be made in an objectively rational, fair, neutral, and nondiscriminatory manner, even though judicial officers may take into account many factors including the complexity of individual cases, special needs of a party, avoidance of conflicts of

interest, time constraints in a case, and the judicial officer's experience with a potential appointee, including current or prior representation of the client, and the perception of the appointee's commitment to providing quality representation to each client.

RULE 99. Effective Date.

[Existing language unaffected by the amendments is omitted to conserve space]

(YYY) The amendments to Sup.R. 8, adopted by the Supreme Court of Ohio on December 13, 2016, shall take effect on January 1, 2017.