

## **Rule 4.117. Qualifications for appointed trial counsel in capital cases**

### **(a) Purpose**

This rule defines minimum qualifications for attorneys appointed to represent persons charged with capital offenses in the superior courts. These minimum qualifications are designed to promote adequate representation in death penalty cases and to avoid unnecessary delay and expense by assisting the trial court in appointing qualified counsel. Nothing in this rule is intended to be used as a standard by which to measure whether the defendant received effective assistance of counsel.

### **(b) General qualifications**

In cases in which the death penalty is sought, the court must assign qualified trial counsel to represent the defendant. The attorney may be appointed only if the court, after reviewing the attorney's background, experience, and training, determines that the attorney has demonstrated the skill, knowledge, and proficiency to diligently and competently represent the defendant. An attorney is not entitled to appointment simply because he or she meets the minimum qualifications.

### **(c) Designation of counsel**

(1) If the court appoints more than one attorney, one must be designated lead counsel and meet the qualifications stated in (d) or (f), and at least one other must be designated associate counsel and meet the qualifications stated in (e) or (f).

(2) If the court appoints only one attorney, that attorney must meet the qualifications stated in (d) or (f).

*(Subd (c) amended effective January 1, 2007.)*

**(d) Qualifications of lead counsel**

To be eligible to serve as lead counsel, an attorney must:

(1) Be an active member of the State Bar of California;

- (2) Be an active trial practitioner with at least 10 years' litigation experience in the field of criminal law;
- (3) Have prior experience as lead counsel in either:
  - (A) At least 10 serious or violent felony jury trials, including at least 2 murder cases, tried to argument, verdict, or final judgment; or
  - (B) At least 5 serious or violent felony jury trials, including at least 3 murder cases, tried to argument, verdict, or final judgment;
- (4) Be familiar with the practices and procedures of the California criminal courts;
- (5) Be familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;
- (6) Have completed within two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

*(Subd (d) amended effective January 1, 2007.)*

**(e) Qualifications of associate counsel**

To be eligible to serve as associate counsel, an attorney must:

- (1) Be an active member of the State Bar of California;

(2) Be an active trial practitioner with at least three years' litigation experience in the field of criminal law;

(3) Have prior experience as:

(A) Lead counsel in at least 10 felony jury trials tried to verdict, including 3 serious or violent felony jury trials tried to argument, verdict, or final judgment; or

- (B) Lead or associate counsel in at least 5 serious or violent felony jury trials, including at least 1 murder case, tried to argument, verdict, or final judgment;
- (4) Be familiar with the practices and procedures of the California criminal courts;
- (5) Be familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;
- (6) Have completed within two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (7) Have demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases.

*(Subd (e) amended effective January 1, 2007.)*

**(f) Alternative qualifications**

The court may appoint an attorney even if he or she does not meet all of the qualifications stated in (d) or (e) if the attorney demonstrates the ability to provide competent representation to the defendant. If the court appoints counsel under this subdivision, it must state on the record the basis for finding counsel qualified. In making this determination, the court must consider whether the attorney meets the following qualifications:

- (1) The attorney is an active member of the State Bar of California or admitted to practice *pro hac vice* under rule 9.40;
- (2) The attorney has demonstrated the necessary proficiency, diligence, and quality of representation appropriate to capital cases;
- (3) The attorney has had extensive criminal or civil trial experience;
- (4) Although not meeting the qualifications stated in (d) or (e), the attorney has had experience in death penalty trials other than as lead or associate counsel;
- (5) The attorney is familiar with the practices and procedures of the California criminal courts;

- (6) The attorney is familiar with and experienced in the use of expert witnesses and evidence, including psychiatric and forensic evidence;
- (7) The attorney has had specialized training in the defense of persons accused of capital crimes, such as experience in a death penalty resource center;
- (8) The attorney has ongoing consultation support from experienced death penalty counsel;
- (9) The attorney has completed within the past two years before appointment at least 15 hours of capital case defense training approved for Minimum Continuing Legal Education credit by the State Bar of California; and
- (10) The attorney has been certified by the State Bar of California's Board of Legal Specialization as a criminal law specialist.

*(Subd (f) amended effective January 1, 2007.)*

**(g) Public defender appointments**

When the court appoints the Public Defender under Penal Code section 987.2, the Public Defender should assign an attorney from that office or agency as lead counsel who meets the qualifications described in (d) or assign an attorney that he or she determines would qualify under (f). If associate counsel is designated, the Public Defender should assign an attorney from that office or agency who meets the qualifications described in (e) or assign an attorney he or she determines would qualify under (f).

*(Subd (g) amended effective January 1, 2007.)*

**(h) Standby or advisory counsel**

When the court appoints standby or advisory counsel to assist a self-represented defendant, the attorney must qualify under (d) or (f).

*(Subd (h) amended effective January 1, 2007.)*

**(i) Order appointing counsel**

When the court appoints counsel to a capital case, the court must complete *Order Appointing Counsel in Capital Case* (form CR-190), and counsel must

complete *Declaration of Counsel for Appointment in Capital Case* (form CR-191).

*(Subd (i) amended effective January 1, 2007; adopted effective January 1, 2004.)*

*Rule 4.117 amended effective January 1, 2007; adopted effective January 1, 2003; previously amended effective January 1, 2004.*