



Ohio Public Defender Commission

William R. Creedon, Chair

Mary A. Augsburger
M. Gabriella Celeste

John P. Curp
Ralph W. Kohnen

Carmen V. Roberto
Roger M. Synenberg

R. Robert Umholtz
Vicki L. Ward

Exceptional Circumstances Exemption

Attorneys should be aware that exemptions will not be issued as a matter of course. Each exemption application must be properly supported, and will receive close scrutiny and thorough review by the Ohio Public Defender Commission.

Indigent defendants are entitled to effective and meaningful legal services that comport with the tenets of the 6th Amendment. To ensure those individuals are receiving quality representation, the Ohio Public Defender Commission established qualifications that an attorney must meet for the county that appoints that attorney to be reimbursed by the Ohio Public Defender. These qualifications are enumerated in Ohio Administrative Code (OAC) 120-1-10. An attorney who does not meet the training and experience requirements of OAC 120-1-10 may request an exemption for exceptional circumstances and, if approved, may proceed as being qualified.

An attorney seeking an exemption should be able to demonstrate a high level of performance in all areas of juvenile or criminal practice, including, but not limited to: his or her pre-trial advocacy skills, substantive motion practice, expert assistance, plea bargaining, sentencing advocacy, post-sentencing advocacy, and protecting appellate rights.

SPECIAL NOTE REGARDING COVID-19 & TRIAL EXPERIENCE: Because the COVID-19 pandemic has significantly limited the ability for courts to safely hold trials across Ohio, thereby limiting the opportunity for attorneys to engage in trials, the Ohio Public Defender Commission has amended its exemption application to provide an abbreviated COVID-19 related exemption option for attorneys who otherwise meet the OAC qualifications. Attorneys who met the qualifications in OAC 120-1-10 to serve as counsel in a given case (juvenile, felony, etc.), but now lack the requisite *trial* experience due to the pandemic, can use section 8 of this form to apply for an exemption through an abbreviated process.

Attorneys seeking an exemption should complete the Exceptional Circumstances Exemption Request form and submit it, along with any supporting documentation the attorney wishes to provide, to the Ohio Public Defender Commission at least two weeks prior to a regularly scheduled quarterly meeting of the Commission. Meeting dates are located on the Office of the Ohio Public Defender's website, www.opd.ohio.gov. Material may be submitted electronically to Laura Austen, Deputy Director, at laura.austen@opd.ohio.gov; or via mail at 250 E. Broad Street, Suite 1400, Columbus, Ohio, 43215. The Commission will consider the request at the next meeting, and notify the attorney within two weeks after said meeting. Questions regarding the form or the process by which to request an exemption should be directed to Laura Austen via email or phone (614.466.5394).

Exceptional Circumstances Exemption Request Form

1. Name: _____

2. Email: _____

3. Address: _____

4. Phone Number: () - _____

5. Supreme Court Registration Number: _____

6. Date of Admission: _____

7. Do you maintain malpractice insurance? Yes No

8. Is this request a COVID-19 related trial experience exemption? Yes No

If no, please proceed to question 9. If yes, please answer the following questions:

8a. Please list the types of cases for which you are seeking an exemption:

8b. I affirm that I meet all qualifications and requirements in OAC 120-1-10 to serve as counsel in the above listed cases, other than the number of trials in which I have served as counsel.

Yes No

8c. I affirm that prior to the COVID-19 pandemic, I was qualified under OAC 120-1-10 to serve as counsel in the above listed cases.

Yes No

If you answered "yes" to 8b and 8c, you are not required to answer any further questions.

9. In the space below, please list the dates you have practiced in criminal law and/or juvenile law, the counties in which you practiced, and specify whether your practice was as a defense attorney, prosecutor, judge/magistrate, judicial staff attorney, etc.

10. Please check each type of case for which you are seeking an exemption (see attached chart that outlines the requirements).

JUVENILE COURT CASES:

Unruly, truancy, violation of court order, and misdemeanor

OVI

Felony of the 3rd, 4th, and 5th degree

Felony of the 1st and 2nd degree

Bindover and serious youthful offender

Murder and aggravated murder

MUNICIPAL AND COUNTY COURT CASES:

Misdemeanor

Misdemeanor OVI

COMMON PLEAS COURT CASES:

Felony OVI

Felonies of the 4th and 5th degree

Felonies of the 3rd degree

Felonies of the 1st and 2nd degree

Life-sentence cases

Death Specification – Lead Trial Counsel

Death Specification – Trial Co-Counsel

APPELLATE COURT CASES:

Misdemeanors and Felonies of the 4th and 5th degree

Felonies of the 3rd degree

Felonies of the 1st and 2nd degree

Cumulative sentences of 25 years or more (whether or not eligible for parole)

Juvenile OVI

Juvenile unruly, truancy, violation of court order, misdemeanor, and felonies of 3rd, 4th, and 5th degree

Juvenile/felony of the 1st and 2nd degree

Juvenile Bindover and serious youthful offender

11. For each type of case that you are requesting an exemption, please explain in detail how you are deficient in meeting the qualifications of OAC 120-1-10, any steps you have taken to meet the qualifications, and why an exemption is necessary.

12. For each type of case that you are requesting an exemption, please explain in detail any qualifications of OAC 120-1-10 that you meet (e.g., you have taken all required training but lack experience).

13. Please provide any additional information that you'd like the Commission to consider in making its decision (material may include reference letters, information on hardship to pay for CLEs, an attorney's completion of a trial or appellate school, etc.).

Signature

Date (submitted)