

Statutory Authority and Qualification Requirements

STATUTORY AUTHORITY:

Under Code of Virginia, §19.2-163.01, the Commission shall have the following powers and duties:

1. To publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants pursuant to § [19.2-159](#).
2. To develop initial training courses for attorneys who wish to begin serving as court-appointed counsel, and to review and certify legal education courses that satisfy the continuing requirements for attorneys to maintain their eligibility for receiving court appointments.
3. To maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants based upon the official standards and to disseminate the list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of the Supreme Court for distribution to the courts. In establishing and updating the list, the Commission shall consider all relevant factors, including but not limited to, the attorney's background, experience, and training and the Commission's assessment of whether the attorney is competent to provide quality legal representation.
4. To establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients, and guidelines for the removal of an attorney from the official list of those qualified to receive court appointments and to notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.
5. To develop initial training courses for public defenders and to review and certify legal education courses that satisfy the continuing requirements for public defenders to maintain their eligibility.

Code of Virginia, §19.2-163.8, provides authority to maintain a list of attorneys who are qualified to represent **defendants charged with capital murder or sentenced to death** as follows:

- A. The Supreme Court and the Indigent Defense Commission, in conjunction with the Virginia State Bar, shall adopt standards for attorneys admitted to practice law in Virginia who are qualified to represent defendants charged with capital murder or sentenced to death, which take into consideration, to the extent practicable, the following criteria: (i) license or permission to practice law in Virginia; (ii) general background in criminal litigation; (iii) demonstrated experience in felony practice at trial and appeal; (iv) experience in death penalty litigation; (v) familiarity with

- the requisite court system; (vi) current training in death penalty litigation; (vii) current training in the analysis and introduction of forensic evidence, including deoxyribonucleic acid (DNA) testing and the evidence of a DNA profile comparison to prove or disprove the identity of any person; and (viii) demonstrated proficiency and commitment to quality representation.
- B. The Supreme Court and the Indigent Defense Commission shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to represent defendants charged with capital murder or sentenced to death. In establishing such a list, the Court and the Commission shall consider all relevant factors, including but not limited to, the attorney's background, experience, and training and the Court's and the Commission's assessment of whether the attorney is competent to provide quality legal representation.
- C. Notwithstanding the requirements of § [19.2-163.7](#), the judge of the circuit court may appoint counsel who is not included on the list, but who otherwise qualifies under the standards established and maintained by the Court and the Commission.
- D. Noncompliance with the requirements of this article shall not form the basis for a claim of error at trial, on appeal, or in any habeas corpus proceeding. The performance of habeas corpus counsel appointed pursuant to this article shall not form a basis for relief in any subsequent habeas corpus proceeding.
- E. The Supreme Court and the Indigent Defense Commission shall, in conjunction with the Virginia State Bar, promulgate and thereafter maintain standards for the qualifications of counsel who shall be considered eligible to be placed on the list of qualified attorneys.

QUALIFICATIONS:

Code of Virginia, §19.2-163.03:

- A. **Initial qualification requirements.** An attorney seeking to represent an indigent accused in a criminal case, in addition to being a member in good standing of the Virginia State Bar, shall meet the specific criteria required for each type or level of case. The following criteria shall be met for qualification and subsequent court appointment:
1. **Misdemeanor case.** To initially qualify to serve as counsel appointed pursuant to § [19.2-159](#) for an indigent defendant charged with a misdemeanor, the attorney shall:
 - (i) if an active member of the Virginia State Bar for less than one year, have completed six hours of MCLE-approved continuing legal education developed by the Indigent Defense Commission, or
 - (ii) if an active member of the Virginia State Bar for one year or more, either complete the six hours of approved continuing legal education developed

by the Commission, or certify to the Commission that he has represented, in a district court within the past year, four or more defendants charged with misdemeanors, or

- (iii) be qualified pursuant to this section to serve as counsel for an indigent defendant charged with a felony.

2. **Felony case.**

- a. To initially qualify to serve as counsel appointed pursuant to § [19.2-159](#) for an indigent defendant charged with a felony, the attorney shall (i) have completed the six hours of MCLE-approved continuing legal education developed by the Commission, and (ii) certify that he has participated as either lead counsel or co-counsel in four felony cases from their beginning through to their final resolution, including appeals, if any.
- b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past year, as lead counsel in four felony cases through to their final resolution, including appeals, if any, the requirement to complete six hours of continuing legal education and the requirement to participate as co-counsel shall be waived.
- c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years, as lead counsel in five felony cases through to their final resolution, including appeals, if any, the requirement to participate as either lead counsel or co-counsel in four felony cases within the past year shall be waived.

NOTE: For felony case requirements, VIDC will only approve cases for which the attorney was involved from the beginning of the case in district court to its final resolution. Representing juveniles charged with felonies in J&DR will not qualify unless the juvenile was transferred to circuit court to be tried as an adult. Probation violations do not qualify. Cases involving direct indictments will be considered on a case by case basis.

NOTE: For the purposes of the certification requirements, “**Co-Counsel**” participates with lead counsel in every critical aspect of the representation of the defendant. Co-counsel is not necessarily counsel of record.

3. **Juvenile and domestic relations case.**

- a. To initially qualify to serve as appointed counsel in a juvenile and domestic relations district court pursuant to subdivision C 2 of § [16.1-266](#), the attorney shall (i) have completed the six hours of MCLE-approved continuing legal education developed by the Commission, (ii) have completed four additional hours of MCLE-approved continuing legal education on representing juveniles developed by the Commission, and (iii) certify that he has participated as either lead counsel or co-counsel in

four cases involving juveniles in a juvenile and domestic relations district court.

- b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has, within the past year, been lead counsel in four cases involving juveniles in juvenile and domestic relations district court, the requirement to complete the 10 hours of continuing legal education shall be waived.
- c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years in five cases involving juveniles in a juvenile and domestic relations district court, the requirement to participate as either lead counsel or co-counsel in four juvenile cases shall be waived.

NOTE: For juvenile case requirements, VIDC will only approve cases in which the attorney was involved from the beginning of the case to its final resolution. The attorney must represent a juvenile defendant. A case may be deemed to be concluded for purpose of certification once deferred disposition is entered. Post trial matters such as probation violations and failing to comply will not qualify.

NOTE: For the purposes of the certification requirements, **“Co-Counsel”** participates with lead counsel in every critical aspect of the representation of the defendant. Co-counsel is not necessarily counsel of record.

- B. **Requalification requirements.** After initially qualifying as provided in subsection A, an attorney shall maintain his eligibility for certification biennially by notifying the Commission of completion of at least six hours of Commission and MCLE-approved continuing legal education. The Commission shall provide information on continuing legal education programs that have been approved.

In addition, to maintain eligibility to accept court appointments under subdivision C 2 of § [16.1-266](#), an attorney shall complete biennially thereafter four additional hours of MCLE-approved continuing legal education on representing juveniles, certified by the Commission.

Initial qualification requirements for Capital Trial Lead Counsel:

- 1. Be an active member in good standing of the Virginia State Bar or admitted to practice pro hac vice;
 - 2. have at least five years of criminal litigation practice (defense or prosecution) within the past seven years;
 - 3. have experience as defense counsel in at least five jury trials, tried to verdict, involving violent crimes with maximum penalties of at least 20 years or more;
 - 4. served as lead counsel in the defense of at least one capital case within the past five years;
- OR

5. served as co-counsel in the defense of at least two capital cases within the past seven years;
AND
6. have had, within the past two years, at least six hours of specialized training in capital litigation, plus at least four hours of specialized training required by §19.2-163.8(A)(vii) of the Code of Virginia of 1950, as amended.

Initial qualification requirements for Capital Trial Co-Counsel:

1. Be an active member in good standing of the Virginia State Bar or admitted to practice pro hac vice;
2. have at least five years of criminal litigation practice (defense or prosecution) within the past seven years;
3. have served as lead or primary defense counsel in at least five jury trials, tried to verdict, involving violent crimes with a maximum penalty of twenty years or more;
4. have had, within the past two years, at least six hours of specialized training in capital litigation, plus at least four hours of specialized training required by §19.2-163.8(A)(vii) of the Code of Virginia of 1950, as amended.

Initial qualification requirements for Capital appellate counsel:

1. Be an active member in good standing of the Virginia State Bar or admitted to practice pro hac vice;
2. have, within the past five years, briefed and argued the merits, after writs have been granted, in:
 - a. at least three felony cases in an appellate court;
OR
 - b. the appeal of a case in which the death penalty was imposed by the trial court;
3. have had, within the past two years, at least six hours of specialized training in capital litigation, plus at least four hours of specialized training required by §19.2-163.8(A)(vii) of the Code of Virginia of 1950, as amended;
4. be thoroughly familiar with the rules and procedures of appellate practice.

Initial qualification requirements for Capital Habeas Corpus Counsel:

Habeas Corpus counsel must satisfy one of the following requirements:

1. Possess experience as counsel of record in Virginia or federal post conviction proceedings involving attacks on the validity of one or more felony convictions, as well as a working knowledge of state and federal habeas corpus practice through specialized training in the representation of persons with death sentences, including the training required by §19.2.163.8(A)(vii) of the Code of Virginia of 1950, as amended;

2. Have served as counsel in at least one capital habeas corpus proceeding in Virginia and/or federal courts during the past three years;
OR
3. Have at least seven years civil trial and appellate litigation experience in the Courts of Record of the Commonwealth and/or federal courts.

Requalification requirements in all Capital Representation:

To maintain eligibility for capital certification, an attorney shall formally recertify every two years by completing at least six (6) hours of specialized training in capital litigation, plus at least four (4) hours of specialized training in the analysis and introduction of forensic evidence, including DNA testing and the evidence of a DNA profile comparison to prove or disprove the identity of any person.