

COMMISSION GUIDELINES RELATED TO CAPITAL CASES

A. Eligibility for reimbursement

- 08/29/90 When a death penalty request is dismissed, the Commission will reimburse capital defense costs incurred up to the point in time that the death penalty request is pending.
- 12/02/94 The Commission will disallow the entire claim in cases in which one attorney's appointment in a capital is not in compliance with Rule 24.
- 10/28/98 In a *pro se* defendant capital case where there is a waiver of counsel, the Commission will reimburse for other expenses approved by the court.
- 12/16/99 The Commission will require counties to repay the Public Defense Fund reimbursed expenses when it is discovered that the compliance of appointed lawyers with the standards of CR 24 was inaccurately certified.
- 3/10/04 If a trial court dismisses a death penalty request and the State files an interlocutory appeal of the court's involuntary dismissal, the Commission will reimburse 50% of the cost of defending against the State's interlocutory appeal.
- 9/24/08 Counties will not be reimbursed from the Public Defense Fund for expenses incurred in capital cases for those periods of time where either lead or co counsel is not in compliance with CR24. If either lead or co-counsel is appointed to a capital case and is not in compliance with CR24 at time of appointment, reimbursement from the Public Defense Fund becomes available upon the date both counsel have certified to the trial court that they are CR24 qualified.

B. Procedure and time limits

- 09/17/90 Claim forms must be submitted to the Commission on the approved claim form, with itemized invoices, billing statements and certification of payments.

- 02/27/91 The auditor's signature on the claim form certifies that the claims were paid.
- 12/05/91 The judge's signature certifies that counsel was appointed in compliance with Rule 24, including attorney workload requirements.
- 09/22/93 Attorneys appointed as lead counsel and co-counsel in capital cases are required to sign the claim form and certify that they were in compliance with Rule 24 and its workload requirements.
- 01/31/01 In capital cases, requests for reimbursements are due within 120 days of the date the county pays the underlying claim. Claims submitted later than 120 after payment by the county auditor are subject to denial by the Commission.

C. Expenses eligible

- 08/29/90 All non-attorney defense costs, both in the trial and sentencing phase of a capital case, are eligible for reimbursement.
- 02/27/91 Costs for court experts, transcripts, jury expenses, court security, and counsel's secretary are not eligible for reimbursement; however, the costs of defense paralegals and law clerks are eligible for reimbursement.
- 08/29/91 Expenses for the cost of an attorney's motel rooms during the trial and defense expenses for photocopying, telephone, postage and mileage are eligible for reimbursement.
- 08/29/91 Training of a court reporter in computer aided transcription and purchase of software is not eligible for reimbursement because it is a court expense.
- 02/27/92 If requested by the defense, the Commission will reimburse costs for transcripts, including daily transcripts, and depositions for use during trial.
- 06/17/92 The Commission will reimburse 50% of the counties' expenses for specialized training of attorneys in the defense of capital cases when claimed in connection with death penalty cases.

- 05/09/96 The Commission will reimburse counties for the expense of appellate transcripts in capital and non-capital cases.
- 09/04/02 Reimbursement of appellate transcripts in death penalty cases is limited to counties that have an approved appellate provision in their comprehensive plan.

D. Miscellaneous

- 02/27/92 Chief Justice Shepard authorized the Commission to create a roster of attorneys and to assist trial courts in finding attorneys who qualify under Criminal Rule 24.
- 04/22/92 The Commission pre-approved death penalty training conducted by the Indiana Public Defender Council, National Legal Aid and Defender Association, Ohio Public Defender Commission, Indiana Continuing Legal Education Forum, Illinois Capital Resource Center, Capital Case Resource Center of Tennessee, California Attorneys for Criminal Justice, and the NAACP Legal Defense Fund.
- 11/17/93 The Commission interprets a “case” as any filed or redocketed matter, regardless of its status, such as the defendant’s incompetency or fugitive status.
- 09/01/94 If a case is transferred from one county to another county, the judge in the county where the case was initially filed has no authority over the defense expenses since that judge is no longer the “trial judge” as described in Rule 24.
- 06/08/95 For death penalty cases, attorneys’ caseloads must be assessed on the basis of all open cases, including those waiting sentencing. Rule 24 does not contemplate a grace period during which the attorney’s caseload is brought down to 20 pending cases.
- 11/16/95 Probation revocation cases will not be counted for determining compliance with CR24.
- 07/14/98 Two or more appellate counsel may be appointed in a capital appeal, and as long as one is capital appeal qualified, the county will be eligible for reimbursement for all counsel. Non-qualified counsel working with qualified counsel on a capital appeal must be paid pursuant to Rule 24.

- 10/28/98 The Commission will not grant a request for an exemption from Standard F concerning CLE for appellate counsel; however, if the county has acted in good faith, the Commission may approve its claim for reimbursement, although future claims would be subject to a reduction of expenses claimed by non-qualified appellate counsel.
- 02/02/00 The Commission approved the Death Penalty Seminar sponsored by the Alabama Criminal Defense Lawyers Association for purposes of complying with Criminal Rule 24.
- 11/29/00 In multiple count death penalty cases, if the cases are joined in a single trial, then the cases will be counted as one death penalty case. However, if one defendant has separate trials involving the death penalty, each trial will be counted as a separate death penalty case and will require counsel in compliance with Rule 24 for each case.
- 04/18/01 In a situation where a defendant was facing six separate death penalty cases, the Commission concluded that having separate counsel for each trial was not necessary; however, the Commission also concluded that only one set of counsel was inadequate.
- 07/13/06 The Commission approved the Death Penalty Seminar sponsored by National Consortium for Capital Defense Training, in conjunction with the Clarence Darrow Death Penalty Defense College, DePaul University College of Law, Chicago, Illinois.
- 03/26/08 The Commission approved the Florida Association of Criminal Defense Lawyers' death penalty seminar for purposes of Criminal Rule 24's required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel.
- 09/24/08 The Commission approved the Thirteenth Annual Federal Habeas Corpus Seminar, by the Defender Services Division of the Administrative Office of the United States Courts, St. Louis, Missouri, August 2008 for purposes of Criminal Rule 24's required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel.
- 06/24/09 The Commission approved the following courses/seminars for purposes of Criminal Rule 24's required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel:
- The Clarence Darrow Death Penalty Defense College presented by the DePaul University College of Law Center for Justice in Capital Cases;
 - The Bryan Schechmeister Death Penalty Defense College presented by the Santa Clara University School of Law;
 - The National Association of Criminal Defense Lawyers and Southern Center for Human Rights course "Making the Case for Life";

- The National Association of Criminal Defense Lawyers course “Capital Voir Dire Training”, and
- The Trial Lawyers College, Dubois, Wyoming course “Death Penalty Defense”.

09/22/10 The Commission approved the Illinois Death Penalty Seminar, sponsored by The Office of the State Appellate Defender, Capital Trial Assistance Unit and the Illinois Institute for Continuing Legal Education, for purposes of Criminal Rule 24’s required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel.

12/12/12 The Commission approved the following courses for purposes of Criminal Rule 24’s required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel:

- Federal Death Penalty Strategy Session, sponsored by the Federal Death Penalty Resource Counsel;
- Annual Death Penalty Seminar, sponsored by the Ohio Association of Criminal Defense Lawyers;
- Death Penalty Seminar Course in Wyoming, sponsored by the Trial Lawyers’ College.

The Commission approved the seminar titled “Death Penalty Defense—Maximizing the Goalposts: Maximizing the ABA Guidelines” sponsored by the Oregon Criminal Defense Lawyers’ Association, for 8.25 of Criminal Rule 24’s required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel.