

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

VI. QUALIFICATIONS AND DUTIES OF COUNSEL

Goal: Counsel must meet these minimum standards before accepting a case. In order to provide effective representation, counsel must engage in regular and ongoing training.

A. In order to assure that clients receive the effective assistance of counsel to which they are constitutionally and statutorily entitled, counsel providing public legal representation should meet the following minimum professional qualifications:

- a. Satisfy the minimum requirements for practicing law in Montana as determined by the Montana Supreme Court;
 - b. Complete continuing legal education within each calendar year as required by the Montana State Bar, which may include courses offered by the Office of the State Public Defender relating to public defender practice or representing persons whose liberty is at risk as a result of State-initiated proceedings;
 - c. Comply with all other training requirements established by the Training Coordinator of the Office of the State Public Defender and approved by the Public Defender Commission; including, but not limited to, mental health disabilities, cultural competency, and drug dependency.
 - d. In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the State of Montana. Counsel has a continuing obligation to stay abreast of changes and developments in the law;
 - e. The foregoing requirements shall be deemed satisfied if counsel is representing clients pursuant to the Student Practice Rule and is being directly supervised by a supervising attorney who meets the standards required for felony defense set forth below.
 - f. All counsel will be evaluated periodically to ensure proficiency in the area(s) in which they practice on behalf of the Office of the State Public Defender.
- B. Additional trial attorneys' qualifications according to type of case:
- a. Death penalty representation. Each attorney acting as lead counsel in a death penalty case shall meet the standards for competency of counsel for indigent persons in death penalty cases adopted by the Montana Supreme Court, and those set forth in the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003);
 - b. Juvenile cases. See Standard Number XIII;
 - c. Involuntary commitments. See Standard Number XIV, XV, XX, XXI;
 - d. Abuse and neglect cases. See Standard Number XVII;
 - e. Felony representation. See Standard Number VI;

Section VI. A. was amended to change the CLE requirement to align with State Bar requirements. In addition, the numerical training requirement for each individual practice area was removed and the new requirement is to "demonstrate proficiency" in each area of practice. Amendments adopted at the [August 27, 2012](#) Commission meeting. Additional discussion at the [August 8, 2012](#) Standards Committee meeting.

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- f. All other cases. Each attorney shall meet the requirements set forth herein and in the Montana Rules of Professional Conduct.

- C. Counsel should only request or accept an assignment if counsel is able to provide quality representation and diligent advocacy for the client.

- D. Trial Standards for Non-capital Cases.

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