a. General. To be eligible for appointment in a capital case, an attorney

(1) Shall have been a member in good standing of the State Bar of Arizona for at least five years immediately preceding the appointment;

(2) Shall have practiced in the area of state criminal litigation for three years immediately preceding the appointment; and

(3) Shall have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

b. Trial Counsel.

(1) Lead counsel. To be eligible for appointment as lead counsel, an attorney must meet the qualifications set forth in section (a) of this rule and the following:

(i) Shall have practiced in the area of state criminal litigation for five years immediately preceding the appointment;

(ii) Shall have been lead counsel in at least nine felony jury trials that were tried to completion and have been lead counsel or co-counsel in at least one capital murder jury trial;

(iii) Shall be familiar with and guided by the performance standards in the 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases; and
(iv) Shall have attended and successfully completed, within one year prior to the initial appointment, at least six hours of relevant training or educational programs in the area of capital defense, and within one year prior to any subsequent appointment, at least twelve hours of relevant training or educational programs in the area of criminal defense.

(2) Co-counsel. To be eligible for appointment as co-counsel, an attorney must be a member in good standing of the State Bar of Arizona and shall have attended and successfully completed, within one year prior to the initial appointment, at least six hours of relevant training or educational programs in the area of capital defense, and within one year prior to any subsequent appointment, at least twelve hours of relevant training or educational programs in the area of criminal defense. Section (b)(1)(iii) applies to co-counsel.

c. Appellate and Post-conviction Counsel. To be eligible for appointment as appellate or post-conviction counsel, an attorney must meet the qualifications set forth in section (a) of this rule and the following:

(1) Within three years immediately preceding the appointment have been lead counsel in an appeal or post-conviction proceeding in a case in which a death sentence was imposed, as well as prior experience as lead counsel in the appeal of at least three felony convictions and at least one post-conviction proceeding that resulted in an evidentiary hearing. Alternatively, an attorney must have been lead counsel in the appeal of at least six felony convictions, at least two of which were appeals from first or second degree murder convictions, and lead counsel in at least two post-conviction proceedings that resulted in evidentiary hearings.

(2) Have attended and successfully completed, within one year prior to the initial appointment, at least six hours of relevant training or educational programs in the area of capital defense, and within one year prior to any subsequent appointment, at least twelve hours of relevant training or educational programs in the area of criminal defense.

(3) Shall be familiar with and guided by the performance standards in the 2003 American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.

d. Exceptional Circumstances. In exceptional circumstances and with the consent of the Supreme Court, an attorney may be appointed who does not meet the qualifications set forth in sections (a)(1) and (2), (b) and (c) of this rule, providing that the attorney's experience, stature and record enable the Court to conclude that the attorney's ability significantly exceeds the standards set forth in this rule and that the attorney associates with himself or herself a lawyer who does meet the standards set forth in this rule. Section (b)(1)(iii) and (c)(3) shall apply to
The purpose of this rule is to establish standards for appointment of counsel for indigent defendants in all stages of capital litigation. Sections (a)(1) and (2) parallel the qualifications set forth in A.R.S. § 13-4041, as amended by Laws 1996, Ch. 7, § 1 (Seventh Spec.Sess.). Section (b) is reserved for standards for trial counsel. Section (c) sets out standards for sole or lead counsel in appellate and post-conviction proceedings. The committee recommends that co-counsel be appointed at all stages of capital litigation. American Bar Association Guideline 2.1, National Legal Aid and Defender's Association Standard 2.1. If the court in its discretion deems it advisable to appoint co-counsel, such attorney need not meet all of the stated requirements to be eligible for appointment. Section (d) is designed to allow appointment of an attorney who technically does not meet the requirements of Sections (a)(1) and (2), (b), or (c), but whose demonstrated ability and experience exceeds the standards contemplated by the rule.

2006 COMMENT

The American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003) is a compendium of best practices for representation in capital cases. Some guidelines may not be applicable to Arizona practice or to the circumstances of a particular case, but in exercising independent professional judgment, counsel should be guided by the performance standards when applicable.

A deviation from the guidelines, however, is not per se ineffective assistance of counsel. The standard for evaluating counsel's performance continues to be that set forth in Strickland v. Washington, 466 U.S. 668 (1984).