

**SUPREME COURT OF PENNSYLVANIA
CRIMINAL PROCEDURAL RULES COMMITTEE
JUVENILE COURT PROCEDURAL RULES COMMITTEE**

JOINT PUBLICATION REPORT

Proposed Adoption of Pa.R.Crim.P. 125 and Pa.R.J.C.P. 153

The Criminal Procedural Rules Committee is considering proposing the adoption of Pennsylvania Rule of Criminal Procedure 125 and the Juvenile Court Procedural Rules Committee is considering proposing the adoption of Pennsylvania Rule of Juvenile Court Procedure 153 for minimum standards for the delivery of effective indigent defense services throughout this Commonwealth pursuant to the Act of Dec. 13, 2023, P.L. 251, No. 34 (Act 34).

Act 34 established the Indigent Defense Advisory Committee (IDAC) and, *inter alia*, tasked IDAC to:

- (1) Propose minimum standards for the delivery of effective indigent defense services throughout this Commonwealth that are consistent with the requirements of the Constitution of the United States and the Constitution of Pennsylvania.
- (2) Propose minimum standards for attorneys providing indigent defense services to ensure that the ability, training and experience of the attorneys match the cases assigned to the attorneys.

72 P.S. § 203-F(i)(1)-(i)(2). The Pennsylvania Supreme Court is then tasked with adopting the proposed minimum standards through a manner prescribed by the Court. *Id.* § 203-F(i)(3).

IDAC has crafted and submitted proposed “Standards for Delivery of Effective Indigent Defense Services” to the Supreme Court of Pennsylvania, which have been referred to the Criminal Procedural Rules Committee and the Juvenile Court Procedural Rules Committee for procedural rulemaking consideration.

One standard would allow each county to develop policies for attorney qualifications and training programs. The Committees believed such an individualized approach would foster inconsistency among the counties. Instead, the minimum qualifications should be established through statewide rule, similar to those established in Pa.R.Crim.P. 801 for defense counsel in capital cases and Pa.R.J.C.P. 182 for juvenile court hearing officers.

Accordingly, the Committees propose Pa.R.Crim.P. 125 and Pa.R.J.C.P. 153 to establish minimum qualifications for counsel who provide indigent defense services. The “qualifications” involve licensure and education. For “education” requirements, the Committees propose an annual continuing legal education (CLE) requirement of at least six hours on topics related to criminal law practice or juvenile law practice. See Pa.R.Crim.P. 125(b) (proposed); Pa.R.J.C.P. 153(b) (proposed). Subdivision (b)(2) of the proposed rules include non-exhaustive lists of CLE topics that would count towards the requirements. The Committees intend to recommend an effective date for the rules reasonably sufficient to allow counsel to obtain the necessary credits.

The Criminal Procedural Rules Committee specifically solicits comment on whether the court should be able to waive the educational requirements in subdivision (b)(2) for appointed counsel.

The Committees also considered what role, if any, the Continuing Legal Education (CLE) Board should have in identifying specific courses that satisfy the requirements of Pa.R.Crim.P. 125 and Pa.R.J.C.P. 153. The breadth of courses that would fall under the scope of subdivision (b)(2) of both rules is substantial and evolving. Moreover, the courses described in subdivision (b)(2) are not exhaustive. The Committees believed that the responsibility for ensuring that counsel’s CLE courses fell within subdivision (b)(2) should fall on those responsible for ensuring that counsel meets the qualifications under the rule. Accordingly, the Committees do not propose that the CLE Board identify courses that meet the scope of courses in subdivision (b)(2).

Subdivision (c) of each rule states, generally that, “to the extent practicable,” counsel’s prior experience “shall... be commensurate with the severity of the offenses, complexity of the case, and stage of proceedings.” It does not contain specific requirements, *e.g.*, number of jury trials, felony cases, appeals, etc. Given the wide range of matters in the span of criminal or juvenile cases, the Committees did not believe it was possible to quantify experiential requirements. Further, the required experience may depend on the type of proceeding if defense counsel may be substituted at different stages. The phrase, “to the extent practicable,” is intended to recognize that exigent circumstances may exist when less-than-experienced representation is better than no representation.

Pursuant to subdivision (d) of each rule, the responsibility for ensuring that counsel is qualified is based on who is assigning counsel. This will primarily fall on the Chief Public Defender, but it can also fall on the county if they are contracting counsel. Finally, with court appointments when counsel is not with the Public Defender’s Office or contracted, the court is responsible for ensuring that counsel meets the qualifications. To aid the court in these circumstances, subdivision (d)(4) contains an affidavit requirement. The affidavit requirement is intended to allow the court to maintain a list of qualified counsel so that a colloquy of counsel is not necessary prior to making each appointment.

The Committees discussed the consequence of failing to abide by the rules-based qualifications and the standards described in the commentary. Mindful of the construct against mirroring other authority, the proposed Comment to Pa.R.Crim.P. 125 would make clear that a violation of the rule would not form an independent basis for relief under the Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546. Likewise, the Comment to Pa.R.J.C.P. 153 contains a similar statement related to Pa.R.J.C.P. 622 (Motion for *Nunc Pro Tunc* Relief). Claims concerning the ineffectiveness of counsel would be governed by separate authority and counsel's actual performance.

Regarding the other standards in IDAC's proposal, the Committees considered the Code of Civility, 204 Pa. Code §§ 99.1-99.3, first adopted by the Court in 2000, as a model for recognizing their aspirational nature. Those standards are proposed to be located within the commentary accompanying Pa.R.Crim.P. 125 and Pa.R.J.C.P. 153. The Committees imported a portion of the Preamble to the Code of Civility into the preamble to the standards stating: "These principles are not intended to supersede or alter existing disciplinary codes or standards of conduct, nor shall they be used as a basis for litigation, lawyer discipline or sanctions."

The Committees invite all comments, concerns, and suggestions.