I.C.R. 44.3. Standards for the Qualification of Appointed Counsel in Capital Cases.

Idaho Criminal Rule 44.3. Standards for the Qualification of Appointed Counsel in Capital Cases.

1. Applicability

The provisions for the appointment of counsel set forth in this Order apply only in cases where the defendant is needy, as defined in I.C. Section 19-851 et seq., counsel is not privately retained by or for the defendant, and the death penalty may be or has been imposed upon the defendant.

2. Number of Attorneys per Case

(a). In a case in which the death penalty may be imposed:

(1). At the initial appearance in the magistrate division, two qualified trial attorneys shall be appointed to represent an indigent defendant, unless the administrative district judge or his/her designee makes specific findings that two attorneys are not necessary.

(2). In the district court upon an indictment, two qualified trial attorneys shall be appointed to represent an indigent defendant, unless the administrative district judge or the assigned district judge makes specific findings that two attorneys are not necessary.

(3). In the event that more than one attorney is appointed, one appointed attorney shall be designated "lead counsel" and the second as "co-counsel."

(b). In a case in which the death penalty has been imposed:

(1). The district judge who sentenced the defendant shall comply with Idaho Criminal Rule 44.2.

(2). In the event that more than one attorney is appointed, one appointed attorney shall be designated "lead counsel" and the second as "co-counsel."

3. Attorney Qualifications

(a). Trial

(1). Lead trial counsel assignments shall be made to attorneys who:

(A). Are members in good standing of the Idaho State Bar, admitted to practice in Idaho or admitted to practice pro hac vice; and

(B). Are experienced and active trial practitioners with at least five (5) years litigation experience in criminal defense or prosecution; and

(C). Have served as lead counsel in no fewer than four (4) felony jury trials of cases which were tried to completion; and have served either as lead or co-counsel in one case in which the death penalty might have been imposed and which was tried through to completion, or served as lead counsel in the sentencing phase of a death penalty case.

(D). Are familiar with the rules, practice and procedure of the district courts of the state of Idaho; and

(E). Are familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; and

(F). Have attended and successfully completed at least twelve (12) hours of Idaho State Bar approved training or educational programs which focus on capital cases, within the last two (2) years; and

(G). Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

(2). Co-counsel assignments shall be assigned to attorneys who:

(A). Are members in good standing of the Idaho State Bar, admitted to practice in Idaho or admitted to practice pro hac vice; and

(B). Qualify as lead counsel under paragraph 3 (a) of this Order or meet the following requirements:

(i). Are experienced and active trial practitioners with at least three (3) years litigation experience in criminal defense or prosecution; and

(ii). Have prior experience as lead counsel in no fewer than three (3) felony jury trials of cases which were tried to completion; and

(iii). Are familiar with the rules, practice and procedure of the district courts of the state of Idaho; and

(iv). Have attended and successfully completed at least six (6) hours of Idaho State Bar approved training or educational programs which focus on capital cases, within the last two years; and

(v). Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

(3). Alternate Procedures.

Applications for lead and co-counsel assignments may be made by persons with extensive criminal trial experience or extensive civil litigation experience, if it is clearly demonstrated to the Idaho Supreme Court or the Court's designee that competent representation will be provided in a capital case. Lawyers appointed under this paragraph shall meet either of the following qualifications:

(A). Experience in some stage of death penalty litigation which does not meet the levels required in paragraphs (a)(1) or (a)(2) above, or,

(B). Specialized post-graduate training in the defense or prosecution of persons accused of capital crimes.

(b). Appeal/Post-Conviction

(1). Appellate or post convictions counsel must either qualify as "lead trial counsel" under Section 3 (a) or meet the following requirements:

(A). Be a member in good standing of the Idaho State Bar, be admitted to practice in Idaho or admitted to practice pro hac vice.

(B). Be familiar with the rules, practice and procedure of the appellate courts of the State of Idaho.

(C). Be experienced and active post-conviction and appellate practitioners with at least three (3) years experience in criminal defense or prosecution.

(D). Have served as court appointed or retained counsel in the appeal or the post conviction review of a case in which the death penalty was imposed, or have served as counsel in a habeas corpus death penalty case in Federal Court.

(E). Have attended and successfully completed at least twelve (12) hours of Idaho State Bar approved training or educational programs which focus on capital cases, within the last two (2) years.

(F). Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases. If the court in its discretion appoints co-counsel for appeal or post conviction, these requirements do not apply to co-counsel.

(2). Alternate Procedures.

Application for lead assignments may be made by persons with extensive criminal trial experience or extensive civil litigation experience, if it is clearly demonstrated to the Idaho Supreme Court or the Court's designee that competent representation will be provided in a capital case. Lawyers appointed under this paragraph shall meet either of the following qualifications:

(A). Experience with the appeal and/or post-conviction litigation of death penalty cases which does not meet the levels detailed in paragraph (1) above, or

(B). Specialized post-graduate training in the defense or prosecution of persons accused of capital crimes.

4. Workload

Appointments pursuant to this Order should provide each client with quality representation in accordance with constitutional and professional standards. The appointing authority shall not make an appointment without assessing the impact of the appointment on the attorney's workload.

5. Compensation and Payment of Expenses

Compensation and payment of expenses shall be made pursuant to the provisions of I.C. 19-860(b). Counsel shall submit timely claims for compensation and payment of expenses in the manner provided in I.C. Section 31-1501 et seq.

6. Procedures for Maintaining Rosters of Qualified Counsel

(a). The Supreme Court of the State of Idaho or the Court's designee shall maintain rosters of attorneys who are competent and eligible to represent capital defendants. The first roster shall contain the names of attorneys eligible for appointment as lead counsel for trial and appeal/post-conviction cases, pursuant to the qualification requirements specified in this Order. The second roster shall contain the names of attorneys eligible for appointment as co-counsel for trial and appeal/post-conviction cases, pursuant to the qualification requirements specified in this Order.

(1). Application

(A). Attorneys may obtain an application form from the Supreme Court of the State of Idaho or the Court's designee.

(B). Completed applications shall be submitted to the Supreme Court of the State of Idaho or the Court's designee. The Court or its designee shall review the application for completeness. If the application is incomplete, it shall be returned to the applicant, explaining what further information is required.

(2). Review and Recommendation

(A). A standing Death Penalty Counsel Review and Recommendation Committee shall be established with membership appointed by the Supreme Court of the State of Idaho.

(B). The Supreme Court or its designee shall forward completed applications to the Death Penalty Counsel Review and Recommendation Committee. Upon receipt, a thorough investigation of the applicant's background, experience, training and an assessment of whether the applicant is competent to provide adequate legal counsel to a capital defendant shall be completed.

(C). The application and recommendation will then be forwarded to the Supreme Court of the State

of Idaho or its designee who will determine whether or not to include the applicant on a roster.

(3). Term of Eligibility

Once included on a roster, the attorney's name shall remain on the roster for two (2) years from the notice of inclusion on the roster. It shall be the attorney's responsibility to forward to the Supreme Court of the State of Idaho or the Court's designee, one month prior to the expiration of their term of eligibility, proof of compliance with the qualification requirements of this Order to remain on a roster.

7. The Supreme Court of the State of Idaho or the Court's designee shall maintain the rosters of qualified capital defense counsel. The Court or the Court's designee shall distribute to all district court judges, at least annually, rosters of qualified capital defense counsel.

8. Notwithstanding the requirement of this rule that all appointments shall be from the court-maintained rosters, if an appointment of counsel from the rosters cannot practically and expeditiously be made, the appointing court may appoint one or more counsel who are not on the roster but who otherwise meet the qualifications set out in this rule. The order of appointment shall contain findings related to each attorney's qualifications under the applicable section of this rule, and shall also require each attorney to file an application under subsection (6)(a)(1) of this rule within thirty (30) days of his or her appointment. Any placement on the roster after such an appointment shall relate back to the date of appointment for all purposes.

(Adopted March 31, 1998; effective January 1, 1999; amended February 12, 1999, effective January 1, 1999; amended and effective May 20, 1999; amended and effective February 14, 2000; amended and effective March 15, 2001; amended January 7, 2003, effective February 1, 2003.)

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