

In the Supreme Court of the State of Idaho

IN RE: ADOPTION OF REVISED IDAHO
CRIMINAL RULES 44.2 AND 44.3

ORDER

The Court has reviewed proposed changes to Idaho Criminal Rules 44.2 and 44.3 related to streamlining the procedures related to the appointment of counsel in capital cases.

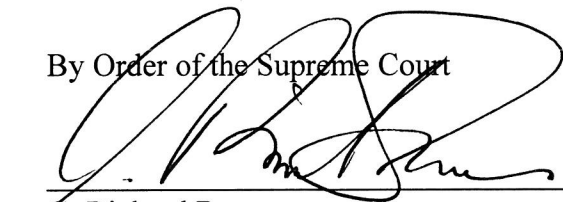
NOW, THEREFORE, IT IS ORDERED that the existing Idaho Criminal Rules 44.2 and 44.3 be, and hereby are, rescinded, and the attached Idaho Criminal Rules 44.2 and 44.3 are hereby adopted.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective February 1, 2022.

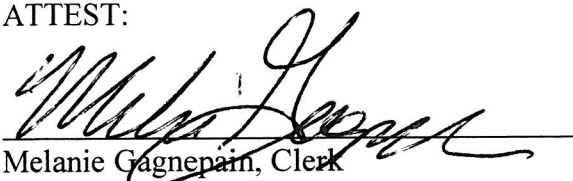
IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate*.

DATED this 26th day of January, 2022.

By Order of the Supreme Court


G. Richard Bevan
Chief Justice, Idaho Supreme Court

ATTEST:


Melanie Gagnepain, Clerk

I, Melanie Gagnepain, Clerk of the Supreme Court/
Court of Appeals of the State of Idaho, do hereby
Certify that the above is a true and correct copy of the
Order entered in the above entitled
cause and now on record in my office. WITNESS my
hand and the Seal of this Court 1-26-22
Melanie Gagnepain, Clerk

By  Deputy

Rule 44.2. Mandatory Appointment of Counsel for Post-Conviction Review After Imposition of Death Penalty

(a) **Appointment of Attorney.** Immediately following the imposition of the death penalty, the district judge who sentenced the defendant must appoint at least two attorneys to represent the defendant for the purpose of seeking any post-conviction remedy referred to in Idaho Code § 19-2719(4) that the defendant may choose to seek. This appointment must be made in compliance with the standards in Rule 44.3, and the attorneys appointed must be someone other than counsel who represented the defendant prior to the imposition of the death penalty. This new counsel will not be considered to be co-counsel with any attorney who represented the defendant prior to the imposition of the death penalty, and may also be appointed to pursue the direct appeal for the defendant.

(b) **Compensation and Payment of Expenses.**

- (1) Unless counsel is employed by a publicly-funded office, lead counsel appointed to represent a capital defendant in post-conviction proceedings must be paid an hourly rate of not less than one hundred dollars (\$100.00) per hour.
- (2) The trial court must authorize additional payments for expenses incidental to representation (including, but not limited to, investigative, expert and other preparation expenses) necessary to adequately litigate those post-conviction claims that are allowed by Idaho Code § 19-2719, to the same extent as a person having retained his or her own counsel is entitled.
- (3) Compensation and payment of expenses must be made pursuant to the provisions of Idaho Code §§ 19-852, 19-859, 19-860 and 19-862. Counsel must submit timely claims for compensation and payment of expenses in the manner provided in Idaho Code § 31-1501 et seq.

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

(a) **Applicability.** The provisions for the appointment of counsel in this rule apply only in cases where (1) the defendant is needy, as defined in Idaho Code § 19-851 et seq., (2) counsel is not privately retained by or for the defendant, and (3) the death penalty may be or has been imposed on the defendant.

(b) **Number of Attorneys Per Case.**

In a case in which the death penalty may be or has been imposed:

- (1) At the initial appearance in the magistrate division, two qualified trial attorneys must be appointed to represent an indigent defendant.
- (2) In the district court on an indictment, two qualified trial attorneys must be appointed to represent an indigent defendant.
- (3) One appointed attorney must be designated "lead counsel" and the second as "co-counsel."

(c) **Attorney Qualifications.** Attorneys appointed pursuant to Idaho Criminal Rule 44.2(a) and 44.3(b) Courts must be selected from the Idaho State Public Defense Commission Capital Defending Attorney Roster.