



I.C.R. 44.2. Mandatory Appointment of Counsel for Post-Conviction Review After Imposition of Death Penalty

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(a) Appointment of Attorney. Immediately following the imposition of the death penalty, the district judge who sentenced the defendant must appoint the State Appellate Public Defender, who must assign 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.

(Adopted January 26, 2022, effective February 1, 2022; amended November 1, 2024, effective November 1, 2024.)

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