

In the Supreme Court of the State of Idaho

IN RE: AMENDMENTS TO IDAHO)
CRIMINAL RULES 10, 12.2, 44.2,)
and 44.3)
_____)

ORDER

The Court, having reviewed a recommendation to amend the Idaho Criminal Rules, and being fully informed:

IT IS ORDERED that the Idaho Criminal Rules are amended as follows:

Rule 10. Arraignment on Indictment or Information

(b) Right to Counsel. If the defendant appears for arraignment without counsel, before being arraigned, the defendant must be informed by the court that defendant has the right to have counsel either of defendant's own selection, or if indigent, by court appointment. The defendant must be asked if defendant desires counsel and if defendant is able to provide his own counsel. If the defendant desires counsel and is found to be indigent as defined by ~~Idaho Code § 19-854~~ Idaho Code § 19-6011, the court must appoint counsel to represent the defendant. No proceedings may take place before the appointment of counsel or until the defendant has had a reasonable period of time to obtain counsel unless the defendant waives the right to counsel.

Rule 12.2. Motions Requesting Additional Defense Services.

(c) Finding of Indigency. The court must not grant a request for public funds to obtain additional services in the absence of a finding of indigency, which must be made on the basis of the standards in ~~Idaho Code § 19-854~~ Idaho Code § 19-6011. The fact that a defendant has private counsel, or has been found not to be indigent for the purpose of appointing counsel at public expense, does not necessarily preclude a finding that a defendant is indigent with regard to obtaining the additional services requested. In making the finding of indigency, the court may require the defendant to provide any relevant information concerning his finances, income, property, and expenses, or any other information relevant to standards for a finding of indigency in ~~Idaho Code § 19-854~~ Idaho Code § 19-6011.

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 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

~~(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 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~~ indigent, as defined in ~~Idaho Code § 19-851 et seq. Chapter 60, Title 19, Idaho Code,~~ (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 imposed:

(1) At the initial appearance in the magistrate division, the trial court must appoint the State Public Defender, who must assign an attorney with experience representing defendants in felony cases ~~and selected from the Idaho State Public Defense Commission Public Defense Roster~~ must be appointed to represent an indigent defendant.

(2) Within fourteen days of the initial appearance in the magistrate division, or in the district court on an indictment, the trial court must appoint the State Public Defender,

who must assign two qualified trial attorneys ~~must be appointed~~ to represent an indigent defendant.

(c) Attorney Qualifications. Attorneys representing indigent defendants pursuant to Idaho Criminal Rules 44.2(a) and 44.3(b)(2) must be selected from the Idaho State Public Defense Commission Capital Defending Attorney Roster by the State Public Defender or the State Appellate Public Defender, as appropriate, who must ensure that such attorneys are qualified to provide team representation to individuals charged with an offense or offenses punishable by a sentence of death and that such representation meets applicable indigent defense standards.

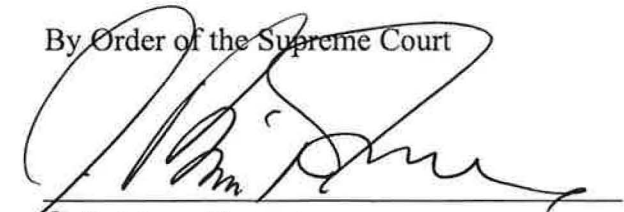
IT IS FURTHER ORDERED that this order and these amendments shall be effective immediately.

IT IS FURTHER ORDERED that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Criminal Rules.

IT IS FURTHER ORDERED, that notice of this Order shall be published for three consecutive weeks on the Idaho State Bar's website and in its weekly E-Bulletin, and that as soon as practicable, a summary of the amendment(s) effected by this Order shall be published in one issue of *The Advocate*.

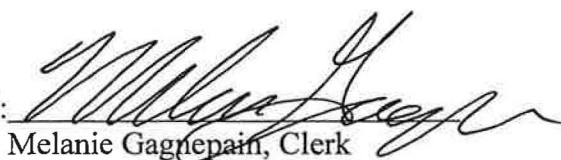
DATED this 1~~st~~ day of November, 2024.

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 11-1-24
Melanie Gagnepain, Clerk

By  Deputy