

## **SPD CAPITAL COUNSEL POLICY**

**Capital Case:** A case in which the state has given notice it will seek the death penalty or is legally entitled to seek the death penalty under Idaho law.

**SPD Capital Counsel:** Attorneys employed with or under contract with the SPD and meet the Minimum Qualifications for Capital Counsel and are approved by the SPD to represent clients at public expense in Capital Cases.

### **Minimum Qualifications for Capital Counsel**

Capital Counsel will meet the following minimum requirements for providing effective representation to be listed as SPD Capital Counsel:

- Licensed to practice law in Idaho and in compliance with Idaho State Bar rules;
- Employed with or under contract with the SPD;
- Have the ability, training, experience, and understanding for capital cases;
- Have advanced familiarity and demonstrated competence with the following:
  - Capital laws, rules, procedures and practices;
  - Capital mitigation
  - Use of mental health evaluations and evidence;
  - Managing and litigating complex cases;
  - Assembling and leading a trial team;
  - Capital jury selection methods and procedures; and
- SPD approval of completed Capital Counsel Attorney Application.
- Capital Trial Lead Counsel will meet or exceed the following experience levels:
  - 10 or more years in criminal defense litigation;
  - 10 or more felony jury trials tried to verdict;
  - First or second chair counsel in 1 or more capital cases where a death notice was filed and which was tried to verdict, capital sentencing or included significant pretrial litigation and mitigation preparation prior to resolution; and
  - TA 4 at the time of application.
- Capital Trial Co-Counsel will meet or exceed the following experience levels:
  - 5 or more years in criminal defense litigation;
  - 5 or more felony jury trials tried to verdict; and
  - TA 4 at the time of application.
- Trial Counsel who 1) meet all other Minimum Requirements for Capital Counsel except the numeric years of criminal defense litigation experience, and 2) also meet the following alternate requirements may, at the SPD's discretion, be approved as SPD Capital Counsel:
  - Demonstrate their abilities, training, and experience are appropriate given the nature and complexity of a capital case; and
  - Demonstrate by providing specific examples and files for review, that they are qualified to provide Constitutional trial or appellate and post-conviction representation in a capital case without meeting the minimum years in criminal defense litigation.

### **Minimum Qualifications for Capital Trial Teams:**

Each case in which the state is legally entitled to seek the death penalty under Idaho law, the following requirements will be met:

- The SPD will assign 1 approved Capital Trial Lead Counsel and 1 approved Capital Trial Co-Counsel;
- At least 1 of the two approved counsel will be assigned before and will be present at Initial Appearance;
- Capital Counsel will not have more than 2 capital cases at a time; and
- Immediate assembly of a team by Capital Defending Attorneys consisting of no less than the following:
  - Fact investigator;
  - Mitigation specialist;
  - Person trained and professionally qualified to screen for mental and psychological conditions; and
  - Other qualified persons needed to provide effective and zealous representation.

### **Assignment of Capital Counsel**

The SPD will assign Capital Counsel in all cases in which notice has been given that the state will seek the death penalty or is legally entitled to seek the death penalty under Idaho law.

### **Minimum Capital Training Standards**

Capital Counsel will complete a minimum of 12 CLE credits with at least 10 of those credits from a nationally recognized capital training program.

- SPD approved nationally recognized capital training programs include:
  - Making the Case For Life (NACDL)
  - Capital Case Defense Seminar (CCDS)
  - National Capital Voir Dire Training Program (National College of Capital Voir Dire)
- Capital Counsel Applicants will meet training requirements within 90 days of being qualified as Capital Counsel.
- Continuing Capital Counsel will meet training requirements every 2 years.

### **Capital Counsel Application Process**

- SPD Employed Attorney Application
  - SPD Trial Attorney submits Application for Capital Counsel Qualification to Managing Attorney;
  - Managing Attorney submits Application with a recommend/do not recommend with reasons to SPD; and
  - SPD approves/denies Application and notifies Trial Attorney and Managing Attorney.
- SPD Contract Attorney Application:
  - SPD Contract Attorney submits Application for Capital Counsel Qualification to District Public Defender;
  - District Public Defender submits Application with a recommend/do not recommend with reasons to SPD; and
  - SPD approves/denies Application and notifies Contract Attorney and District Public Defender.

### **Capital Training Request**

- SPD Trial Attorney Request:
  - SPD Trial Attorney submits Capital Training Request to Managing Attorney;
  - Managing Attorney submits Request with a recommend/do not recommend and reasons to Training & Development Director;
  - SPD approves/denies Request and Training & Development Director notifies Trial Attorney and Managing Attorney; and
  - Upon approval of Capital Training Request, Trial Attorney will submit travel Plan to the Chief Financial Officer.
- SPD Contract Attorney Request:
  - SPD Contract Attorney submits Capital Training Request to District Public Defender;
  - District Public Defender submits Request with a recommend/do not recommend and reasons to the Training & Development Director;
  - SPD approves/denies Request and Training & Development Director notifies Contract Attorney and District Public Defender; and
  - Upon approval of Capital Training Request, Contract Attorney will submit travel Plan to the Chief Financial Officer.