

Understanding The Costs of Capital Post-Conviction Representation

Each death penalty case involves unique circumstances and facts, and the costs involved will vary widely based on a number of factors, including the jurisdiction where your client is incarcerated and the specific issues you will raise. For these reasons, we cannot assess in advance what your actual costs will be. However, several of the most common categories of expenses are listed below.



Utilize Your Strategic Advisor!

The best way to reduce the costs of capital representation is to consult early and often with your strategic advisor. Doing so will help you avoid unnecessary research or investigation and help you focus on the most promising issues. Your advisor will be an invaluable asset to your team at every stage of the representation, saving you both time and resources.

Attorney Travel

Almost every case will require at least some out-of-pocket expenses for attorney travel. This cost can be moderated by utilizing local counsel and investigators for routine court filings and in-person investigation. Some of the various reasons attorneys need to travel include:

- Meet with the client
- Interview jurors
- Interview witnesses
- Interview family members and others for mitigation development
- Conduct factual investigation (visit crime scene, retrieve records, etc.)
- Conduct evidentiary hearing
- Argue motions

Evidentiary Hearing

In state post-conviction cases, your goal is to obtain an evidentiary hearing where you can develop the new evidence that will be used to argue for relief. This is your best and perhaps only chance to create a record of the errors and evidence in your client's case. The record you create in state court proceedings will be the record the federal courts review in federal habeas. This hearing is like a trial so you should expect to incur expenses things like exhibits, photocopying, and expert testimony.

Experts

One of the biggest costs you will incur in your representation of a death row inmate is expert fees. It is almost impossible to determine in advance how many and what types of experts will be necessary for any given case, but some of the common experts needed in many death penalty cases are listed below:

- DNA Expert
- Experts in other human physical evidence (including fingerprints, bite-marks, and hair samples)
- Crime Scene Reconstructionist
- Ballistics Specialist
- Forensic Psychiatrist
- False Confession Expert
- Mental Retardation Expert
- Neurologist
- Expert capital defender (for ineffectiveness claims)

There are several ways you can reduce the cost of expert witnesses. Choosing a case where actual innocence is not a factor can reduce costs because cases involving the testing of DNA and other physical evidence to prove innocence are often the most expensive. A few experts will work for a reduced fee in death penalty cases. There are also certain jurisdictions where it is more likely that the court will provide some funding for experts. All counsel are encouraged, regardless of jurisdiction, to seek payment for expert expenses from the court.

Investigators & Mitigation Specialists

At least one investigator and one mitigation specialist will be an essential part of your defense team. Very few of our cases were adequately investigated at trial. It is absolutely essential that post-conviction counsel conduct a thorough, in-depth investigation of both the client's background and the facts of the crime, regardless of what the trial transcript or trial counsel suggests. Investigators and mitigation specialists have the skills and experience to efficiently gather the necessary information. There will be other tasks, such as gathering records and interviewing witnesses, that junior associates and legal assistants can handle.

For additional information about costs and the cases we are currently seeking to place, please contact the Project at 202-662-1738 or deathpenaltyproject@staff.abanet.org.