

Effective 7/1/2026

78B-9-109 Appointment of pro bono counsel or counsel from Indigent Appellate Defense Division.

- (1)
 - (a) If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis or from the Indigent Appellate Defense Division, created in Section 75E-10-602, to represent the petitioner in the postconviction court or on postconviction appeal.
 - (b) Counsel who represented the petitioner at trial or on the direct appeal may not be appointed to represent the petitioner under this section.
- (2) In determining whether to appoint counsel, the court may consider:
 - (a) whether the petitioner is incarcerated;
 - (b) the likelihood that an evidentiary hearing will be necessary;
 - (c) the likelihood that an investigation will be necessary;
 - (d) the complexity of the factual and legal issues; and
 - (e) any other factor relevant to the particular case.
- (3) An allegation that counsel appointed under this section was ineffective cannot be the basis for relief in any subsequent postconviction petition.

Amended by Chapter 291, 2026 General Session