

**POLICY 3, STANDARD 2 OF THE
SUPREME COURT POLICIES
REGARDING CASES ARISING FROM
JUDGMENTS OF DEATH**

Policy 3. Standards governing filing of habeas corpus petitions and compensation of counsel in relation to such petitions

2. Compensation standards

2-1. This court's appointment of appellate counsel for a person under a sentence of death is for the following: (i) pleadings and proceedings related to preparation and certification of the appellate record; (ii) representation in the direct appeal before the California Supreme Court; (iii) preparation and filing of a petition for a writ of certiorari, or an answer thereto, in the United States Supreme Court and, if certiorari is granted, preparation and filing of a brief or briefs on the merits and preparation and presentation of oral argument; and (iv) representation in the trial court relating to proceedings pursuant to Penal Code section 1193.

This court's appointment of habeas corpus counsel for a person under a sentence of death shall be made simultaneously with appointment of appellate counsel or at the earliest practicable time thereafter. The appointment of habeas corpus counsel is for the following: (i) investigation, and preparation and filing (if warranted), of a habeas corpus petition in the California Supreme Court, including any informal briefing and evidentiary hearing ordered by the court and any petition to exhaust state remedies; (ii) representation in the trial court relating to proceedings pursuant to Penal Code section 1227; and (iii) representation in executive clemency proceedings before the Governor of California.

Absent prior authorization by this court, this court will not compensate counsel for the filing of any other motion, petition, or pleading in any other California or federal court or court of another state. Counsel who seek compensation for representation in another court should secure appointment by, and compensation from, that court. *[As amended effective Dec. 22, 1993, Jan. 22, 1998, and Feb. 4, 1998.]*

2-2. Habeas corpus counsel should expeditiously investigate potentially meritorious bases for filing a petition for a writ of habeas corpus. If the timing of separate appointments permits, this investigation should be done concurrently with appellate counsel's review of the appellate record and briefing on appeal, and in any

event, in cooperation with appellate counsel. *[As amended effective Dec. 21, 1992, and Jan. 22, 1998.]*

2-2.1. In all cases in which counsel was appointed on or after the October 12, 1997, enactment of Senate Bill No. 513 (Stats. 1997, ch. 869), counsel, without prior authorization of the court, may incur expenses up to a total of \$25,000 for habeas corpus investigation, and may submit claims to the court for reimbursement up to that amount. Investigative expenses include travel associated with habeas corpus investigation, and services of law clerks, paralegals, and others serving as habeas corpus investigators. The reasonable cost of photocopying defense counsel's trial files is not considered an investigative expense, and will be separately reimbursed. The court will reimburse counsel for expenses up to \$25,000 that were reasonably incurred pursuant to the duty to investigate as described in standard 1-1, but it will not authorize counsel to expend, nor will it reimburse counsel for, habeas corpus investigation expenses exceeding \$25,000 before the issuance of an order to show cause. This policy applies to both hourly ("time and costs") and fixed fee appointments.

The policy described in the foregoing paragraph shall also apply to those cases in which counsel was appointed prior to October 12, 1997 (the enactment of Sen. Bill No. 513), and in which, by January 22, 1998, the effective date of the above-described policy, the defendant has not filed a habeas corpus petition in this court and no more than 90 days [now 180 days] have passed since the final due date for the filing of the appellant's reply brief on direct appeal.

As to those cases in which, by January 1, 2008 (the effective date of Assem. Bill No. 1248), the defendant has not filed a capital-related habeas corpus petition in this court and the date by which to file a presumptively timely petition has not yet passed, counsel may be reimbursed up to \$50,000 for those investigative services and expenses incurred on or after that date. Such investigative funding for expenses incurred after January 1, 2008, also is available in those cases in which a presumptively timely petition has been filed by January 1, 2008, but petitioner's reply to the informal response has not been filed and the time to do so (with any extensions of time) has not passed as of that date. *[As amended effective Jan. 16, 2002, and Jan. 1, 2008; standard adopted effective Jan. 22, 1998.]*

2-2.2. In all cases in which counsel was appointed on an hourly basis prior to October 12, 1997, and in which, by January 22, 1998, either a petition for a writ of habeas corpus has been filed in this court, or more than 90 days have passed since the final due date for the filing of the appellant's reply brief on direct appeal, requests by appointed counsel for authorization to incur, and reimbursement of, investigation expenses shall be governed by the following standards (2-2.3 through 2-4.4): *[As amended effective Dec. 21, 1992, and Jan. 22, 1998.]*

2-2.3. Without prior authorization of the court, counsel may incur expenses up to a total of \$3,000 for habeas corpus investigation relating to a death penalty judgment, and may submit claims to the court for reimbursement up to that amount. The court will reimburse counsel for expenses up to \$3,000 that were reasonably incurred pursuant to the duty to investigate as described in standard 1-1. *[As amended effective Dec. 21, 1992, and Jan. 22, 1998.]*

2-2.4. If after incurring \$3,000 in investigation expenses (or if \$3,000 in reimbursement for investigation funds previously has been granted on behalf of the same defendant/petitioner with regard to the same underlying death penalty judgment), counsel determines it is necessary to incur additional expenses for which he or she plans to seek reimbursement from the court, counsel must seek and obtain prior authorization from the court. As a general rule, the court will *not* reimburse counsel for expenses exceeding \$3,000, without prior authorization of the court. Requests by appointed counsel for prior authorization to incur investigation expenses shall be governed by the following standards. *[As amended effective Dec. 21, 1992, and Jan. 22, 1998.]*

2-3. Counsel shall file with this court a “Confidential request for authorization to incur expenses to investigate potential habeas corpus issues,” showing good cause why the request was not filed on or before the date the appellant’s opening brief on appeal was filed. *[As amended effective Dec. 21, 1992, and Jan. 22, 1998.]*

2-4. The confidential request for authorization to incur expenses shall set out: *[As amended effective Dec. 21, 1992.]*

2-4.1. The issues to be explored;

2-4.2. Specific facts that suggest there may be an issue of possible merit;

2-4.3. An itemized list of the expenses requested for each issue of the proposed habeas corpus petition; and

2-4.4. (a) An itemized listing of all expenses previously sought from, and/or approved by any court of this state and/or any federal court in connection with any habeas corpus proceeding or investigation concerning the same judgment and petitioner; (b) A statement summarizing the status of any proceeding or investigation in any court of this state and/or any federal court concerning the same judgment and petitioner; and (c) A copy of any related petition previously filed in any trial and/or lower appellate court of this state and/or any federal court concerning the same judgment and petitioner. *[As amended effective Jan. 27, 1992, and Dec. 21, 1992.]*

2-5. Counsel generally will not be awarded compensation for fees and expenses relating to matters that are clearly not cognizable in a petition for a writ of habeas corpus. *[As renumbered effective Dec. 21, 1992.]*

2-6. When a petition is pending in this court to exhaust claims presented in a federal habeas corpus petition, a request by counsel for investigative funds to bolster or augment claims already presented in the petition normally will be denied absent a showing of strong justification for the request. A request for investigative funds may be granted if the petitioner demonstrates that he or she has timely discovered new and potentially meritorious areas of investigation not previously addressed in the petitioner's federal or state petitions. This has been the internal operating policy of the court since December 16, 1992. *[Standard adopted effective June 20, 1996.]*

2-7. Each request for fees relating to a habeas corpus petition must be accompanied by: (a) An itemized listing of all fees previously sought from, and/or approved by any court of this state and/or any federal court in connection with any habeas corpus proceeding or investigation concerning the same judgment and petitioner; (b) A statement summarizing the status of any proceeding or investigation in any court of this state and/or any federal court concerning the same judgment and petitioner; and (c) A copy of any related petition previously filed in any trial and/or lower appellate court of this state and/or any federal court concerning the same judgment and petitioner. *[As renumbered and amended effective Dec. 21, 1992, and as renumbered effective June 20, 1996.]*

2-8. In a case in which the court orders an evidentiary hearing, and counsel and the court do not enter into a "fixed fee and expenses agreement" covering the evidentiary hearing (see "Guideline 10" of the "Guidelines for Fixed Fee Appointments, on Optional Basis, to Automatic Appeals and Related Habeas Corpus Proceedings in the California Supreme Court"), requests for reimbursement of necessary and reasonable expenses incurred in preparation for and presentation of the evidentiary hearing shall be governed by the following standards: *[Standard adopted effective Jan. 22, 1997.]*

2-8.1. Counsel may incur "incidental" expenses (i.e., travel to and from the evidentiary hearing and related hearings before the referee, meals and lodging during the hearing, telephone charges, photocopying, etc.) without prior approval, and the court will reimburse counsel for such itemized, reasonable and necessarily incurred expenses pursuant to the court's "Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants in the California Supreme Court," part III ("Necessary Expenses"). *[Standard adopted effective Jan. 22, 1997.]*

2-8.2. Counsel should seek and obtain from this court prior approval for all investigation and witness expenses, including, but not limited to, investigator fees and

costs, expert fees and costs, and expert witness fees and costs. *[As amended effective Jan. 22, 1998.]*

2-8.3. Counsel may submit requests for reimbursement of expenses every 60 days to this court, and will be reimbursed for necessary and reasonable expenses consistently with part III of the “Payment Guidelines,” *supra*. *[Standard adopted effective Jan. 22, 1997.]*