

# **SUPREME COURT POLICIES REGARDING CASES ARISING FROM JUDGMENTS OF DEATH**

**Adopted by the Supreme Court effective June 6, 1989**

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December 22, 1993, June 20, 1996, January 22, 1997,  
January 22, 1998, February 4, 1998, August 23, 2001,  
December 19, 2001, January 16, 2002, July 17, 2002,  
July 26, 2002, November 20, 2002,  
November 30, 2005, January 1, 2008, and February 1, 2025**

## **Policy 1. Scope and purpose**

This document sets out general Supreme Court policies applicable to counsel appointed by this court to provide representation in an automatic appeal from a judgment of death, in death penalty-related habeas corpus proceedings, and in other postconviction proceedings arising out of a judgment of death. These policies are additional to, and do not defeat, replace, or diminish, counsel's responsibilities under federal and state law, including (without limitation) the federal and state Constitutions, federal and state statutory law, the California Rules of Court, the California Rules of Professional Conduct, and applicable case law. For specific information on the Supreme Court's policies and practices related to compensation for appointed counsel, see the court's Payment Guidelines for Counsel Appointed by the Supreme Court to Represent Indigent Criminal Appellants in the California Courts.

## **Policy 2. Standards governing counsel in automatic appeals**

### Policy 2.1 General Duties

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; (iv) representation in the superior court relating to proceedings pursuant to Penal Code section 1193; and (v) representation in other proceedings, as may be specifically authorized in advance by the court in exceptional circumstances.

Appellate counsel in a capital case shall take and maintain detailed and understandable digitized or electronic transcript notes and shall compile and maintain a detailed list of potentially meritorious habeas corpus issues that have come to appellate counsel's attention. In addition, if appellate counsel's appointment does not include habeas corpus representation, until separate counsel is appointed for that purpose, appellate counsel shall preserve evidence that comes to the attention of appellate counsel if that evidence appears relevant to a potential habeas corpus investigation.

If separate habeas corpus counsel is appointed, appellate counsel shall deliver to habeas corpus counsel a copy of the list of potentially meritorious habeas corpus issues, a copy of the transcript notes, and any preserved evidence relevant to a potential habeas corpus investigation. Thereafter, appellate counsel shall update the issues list and transcript notes as warranted and deliver copies of the issues list and transcript notes to habeas corpus counsel periodically or upon request. Appellate counsel shall consult with and work cooperatively with habeas corpus counsel to facilitate timely investigation, and timely preparation and filing (if warranted) of a habeas corpus petition by habeas corpus counsel.

In the event that more than one counsel is appointed to represent the same defendant jointly, one attorney must be designated as lead counsel and is responsible for the overall conduct of the case and for supervising the work of appointed associate counsel and any nonappointed, supervised counsel. (Cal. Rules of Court, rule 8.605.)

### Policy 2.2 Cooperation with Assisting Entity or Counsel

Appellate counsel appointed by this court have a duty to cooperate, as a condition of the appointment, with the assisting entity or counsel designated by the court to provide outside consultation and resource assistance to appointed counsel. Appointed counsel's cooperation and close working relationship with their assisting entity or counsel are important to achieving the common goal of maintaining a high level of legal representation in all capital appeals and related habeas corpus/executive clemency proceedings.

The court requires the assisting entity or counsel to report to it periodically and in detail on appointed counsel's case progress. The court places considerable weight on these reports in determining compensation of counsel and whether counsel should be given additional capital case appointments.

Assisting entities that may be designated in this capacity include, as appropriate, the California Appellate Project in San Francisco and the Office of the State Public Defender. (See Cal. Rules of Court, rule 8.605(g).) In the event the designated assisting entity or counsel has a conflict of interest, the court will designate an alternative assisting entity, or an experienced private capital appellate practitioner, as appropriate.

Appointed counsel's obligation to cooperate with other appointed counsel and the assisting entity or counsel includes the following duties:

1. Appellate counsel must promptly make available to the assisting entity or counsel, for review, the above-described digitized or electronic transcript notes and detailed list of potentially meritorious habeas corpus issues, as well as a list of potential issues on the direct appeal.
2. Upon a request from the assisting entity or counsel, and after consultation with the Capital Appointments Coordinator, appellate counsel must either make a copy of relevant portions of the record available to that entity or counsel for its review, or permit the assisting entity or counsel to photocopy the record.
3. Appointed counsel must promptly initiate and maintain communication with the defendant/appellant, trial counsel, and any separately appointed counsel.
4. Appointed counsel must review carefully all manuals, newsletters, and other materials distributed by any assisting entity or counsel, and make appropriate use of the resources available in brief and information banks.
5. Unless the court advises counsel otherwise, appointed counsel are expected to attend post-appointment training programs presented by the assisting entities or counsel.
6. Appellate counsel must maintain ongoing consultation with the assisting entity or counsel regarding possible appellate issues; drafts of motions, pleadings, and briefs; and oral argument. The court anticipates that all appointed counsel will participate in a moot court in preparation for oral argument.
7. Appointed counsel must consult with the assisting entity or counsel regarding the amount of time appointed counsel plans to spend researching the direct appeal and/or litigating a habeas corpus petition. In so doing, appointed counsel must consult, and be guided by, the court's (a) "time and costs" payment guidelines and (b) "fixed fee" guidelines.
8. Appointed counsel must submit drafts of all motions, pleadings, briefs, petitions and replies, investigation plans, etc., to the assisting entity or counsel for review, allowing sufficient time for that review and for incorporating appropriate suggested changes into the final document.

9. Appointed counsel must provide the assisting entity or counsel with copies of all court orders, motions, pleadings, briefs, petitions, replies and responses, etc., filed by appointed counsel and by counsel for the respondent.

The court anticipates that all appointed counsel will comply with these duties and provide the foregoing level of cooperation with other appointed counsel and with the assisting entity or counsel. The court will consider appointed counsel's cooperation and compliance with these duties in determining counsel's compensation (either fixed fee or time-and-costs) and counsel's suitability for subsequent appointments. Also, unless counsel has substantially complied with these duties, the assisting entity or counsel may be unable to submit the substantial compliance letter required under fixed fee guideline 5 ("Progress Payments").

If appointed counsel, or the assisting entity or counsel, identifies problems in complying with these duties, appointed counsel, or the assisting entity or counsel, should promptly notify the court's Capital Appointments Coordinator.

**Policy 3. Standards governing counsel in habeas corpus and other postconviction proceedings**

Policy 3.1 Scope of Appointment

Proposition 66, the "Death Penalty Reform and Savings Act of 2016," effective October 25, 2017, requires the court that issued the sentence of death offer to appoint habeas corpus counsel for a state prisoner subject to a capital sentence. (Gov. Code, § 68662; Pen. Code, § 1509.)

Following the effective date of Proposition 66, the responsibility for appointment of habeas corpus counsel falls primarily to the sentencing court. This court's ongoing function relating to the appointment of habeas corpus counsel is limited to replacement counsel appointments following the withdrawal, death, or incapacity of counsel previously appointed by this court; and extends only to work performed in the superior court in connection with habeas corpus petitions transferred to that court in which this court expressly retained jurisdiction over appointment and payment of counsel.

To the extent this court appointed habeas counsel in certain cases prior to the enactment of Proposition 66, and has elected to maintain jurisdiction over the appointment and payment of habeas corpus counsel in such cases, the Supreme Court maintains these standards in order to: (i) ensure that potentially meritorious habeas corpus petitions will be presented and heard in a timely fashion; (ii) provide counsel appointed by this court some certainty of payment for authorized legal work and investigation expenses; and (iii) provide this court with a means to monitor and regulate expenditure of public funds paid to counsel who seek to investigate and file habeas corpus petitions.

This court's appointment of habeas corpus counsel for a person under a sentence of death is limited to the following representation: (i) the preparation and litigation of a petition for writ of habeas corpus in the superior court; and, in the absence of a moratorium on the death penalty, (ii) representation in the superior court relating to proceedings pursuant to Penal Code section 1227; and (iii) representation in executive clemency proceedings before the Governor of California.

Following the effective date of Proposition 66, this court will compensate habeas corpus counsel appointed by this court only for (i) litigation of a habeas corpus petition transferred by this court to the sentencing court, including any informal briefing and evidentiary hearing ordered by that court and any work performed to develop and present a claim under the Racial Justice Act that complies with the investigation duties of this standard (Pen. Code, § 745); and, in the absence of a moratorium on the death penalty, (ii) representation in the superior court relating to proceedings pursuant to Penal Code section 1227; and (iii) representation in executive clemency proceedings before the Governor of California. The court's responsibilities in this respect are subject to termination upon the sentencing court's appointment of counsel. (See Gov. Code, § 68662; Pen. Code, §§ 1473, subd. (e), 1509.)

Absent prior authorization by this court, this court will not compensate habeas corpus counsel for the filing of any motion, petition, or pleading in any California intermediate appellate court, federal court, or court of another state. Counsel who seek compensation for representation in another court, or for a motion or petition not expressly authorized by this court's appointment or subsequent order, should secure appointment by, and compensation from, the court in which the filing is proposed to be made.

Habeas corpus counsel appointed by this court in a capital case shall have a duty to expeditiously investigate factual and legal grounds for the filing of a petition for a writ of habeas corpus, including claims under the Racial Justice Act. (Pen. Code, § 745.) The duty to investigate is limited to investigating potentially meritorious grounds for relief that come to counsel's attention in the course of reviewing appellate counsel's list of potentially meritorious habeas corpus issues, the transcript notes prepared by appellate counsel, the appellate record, trial counsel's existing case files, and the appellate briefs, and in the course of making reasonable efforts to discuss the case with the defendant, trial counsel, and appellate counsel. The duty to investigate does not impose on counsel an obligation to conduct, nor does it authorize the expenditure of public funds for, an unfocused investigation having as its object uncovering all possible factual bases for a collateral attack on the judgment. Instead, counsel has a duty to investigate potential habeas corpus claims only if counsel has become aware of information that might reasonably lead to actual facts supporting a potentially meritorious claim.

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.

### Policy 3.2 Cooperation with Assisting Entity or Counsel

Counsel appointed by this court to represent a defendant in habeas corpus or other postconviction proceedings have a duty to cooperate, as a condition of the appointment, with the assisting entity or counsel designated by the court to provide outside consultation and resource assistance to appointed counsel, as previously described in Policy 2.2, *ante*.

### Policy 3.3 Reimbursement of Expenses

#### *3.3.1 Investigation Expenses*

To the extent counsel appointed by this court seeks reimbursement for investigative expenses, 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 investigative work was not conducted prior to the filing of the habeas corpus petition. Good cause in this respect is presumed if (i) counsel is litigating a habeas corpus petition transferred by this court to the sentencing court and as to which this court, in its transfer order, expressly retained jurisdiction over appointment and payment of counsel; (ii) counsel was appointed by this court before July 1, 2023; and (iii) counsel seeks reimbursement for investigative expenses in connection with a claim brought under the Racial Justice Act, Penal Code section 745 (RJA) that are in compliance with Policy 3.1. The court will not compensate counsel for investigative expenses outside the scope of representation described above.

Investigative expenses include travel associated with habeas corpus investigation, and services of law clerks, paralegals, and others serving as habeas corpus investigators.

The confidential request for authorization to incur expenses shall set out: (1) The issues to be explored; (2) specific facts that suggest there may be an issue of possible merit; (3) an itemized list of the expenses requested for each issue of the proposed habeas corpus petition; (4) 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; (5) 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 (6) a copy of any related petition previously filed in any court of this state and/or any federal court concerning the same judgment and petitioner.

Counsel may incur expenses investigating potential habeas corpus claims in a manner consistent with Policy 3.1, *ante*, up to the amount (\$25,000 or \$50,000, depending upon the circumstances) specified in former Policy 2-2.1 of the Supreme Court Policies Regarding Cases Arising from Judgments of Death (as last amended Jan. 1, 2008) without an additional showing of good cause, and may submit claims for reimbursement for up to that amount. (See Appendix, former Policy 2-2.1.) In addition, counsel may incur expenses up to a total of \$25,000 for RJA-related habeas corpus investigation in connection with a petition transferred to a sentencing court, consistent with Policy 3.1, *ante*, following receipt of this court’s authorization, and may submit claims to the court for reimbursement up to that amount. The court will not compensate counsel for investigative expenses above these limits absent prior authorization upon a showing of good cause.

When a petition is pending 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.

### *3.3.2 Other Expenses*

In a case in which the sentencing court orders an evidentiary hearing in connection with a habeas corpus petition pending in this court prior to the October 25, 2017, effective date of Proposition 66, and counsel appointed by this court has not entered into a “fixed fee and expenses agreement” with this court covering the evidentiary hearing (see “Guideline 10, Fixed Legal Fees and Expenses for Evidentiary Hearings,” of the “Guidelines for Fixed Fee Appointments, on Optional Basis, to Automatic Appeals in the California Supreme Court and Related Habeas Corpus Proceedings in California Courts”), 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:

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”).

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.
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.”

**Policy 4. Contents of Declarations in Support of Extension of Time (EOTs) in the Supreme Court**

Any declaration submitted in support of an EOT request must include the following:

1. The original due date for the uncompleted matter for which an EOT is sought; the total amount of time that has elapsed since that date; and the number of prior extensions requested and granted or denied.
2. The number of pages in the record on appeal, as follows: (a) the number of pages in the combined record on appeal, both reporter’s and clerk’s transcripts, including juror questionnaires, and (b) the number of pages in the combined record on appeal, excluding the juror questionnaires.
3. A good faith estimate of the percentage of work accomplished to date, with regard to the uncompleted matter for which an EOT is sought; a good faith estimate of the amount of time required for the remaining work to be done, with regard to the uncompleted matter for which an EOT is sought; and a proposed target date for the filing of that matter.

As appropriate, counsel of record may be requested to submit a supplemental declaration to establish good cause for any requested EOT.

Pursuant to the court’s longstanding practice, extensions of time for briefing will be granted in up to 60-day intervals.

**Policy 5. Confidential Status Reports (CSR) of Appointed Counsel and Assisting Entity or Counsel**

In accordance with longstanding court practice, until appointed appellate counsel files the appellant’s opening brief, a current CSR must be submitted every 60 days. Lead appointed counsel must serve a copy of the CSR on the assisting entity or attorney and on any appointed associate counsel, and must submit proof of service with the report. A CSR submitted by appointed counsel must include the following:



1. Current case status, including a good faith estimate of the percentage of work accomplished to date with regard to each pending uncompleted task.
2. Progress during the last 60 days.
3. Problems and reasons for any delay.
4. Future plans, including a good faith estimate of the amount of time it will take for the remaining work to be done as to each pending uncompleted task, and a proposed target date for completion of each such task.

Whenever appointed appellate counsel has filed a request for an EOT to file the appellant's opening brief or appellant's reply brief and the court has subsequently denied that request, appointed counsel must submit to the court and serve upon the assisting entity or attorney a CSR as described above 30 days after the court's order denying the request and every 30 days thereafter until the brief has been filed.

In addition, the assisting entity or attorney must also submit to the court 30 days after the date of the court's order and every 30 days thereafter until the brief is filed a CSR providing the following:

1. The assisting entity's or attorney's assessment of current case status, including a good faith estimate of the percentage of work accomplished to date with regard to each pending uncompleted task.
2. The assisting entity's or attorney's assessment of appointed counsel's progress during the last 30 days.
3. The assisting entity's or attorney's views regarding any problems and the reasons for delay.
4. Future plans and arrangements appointed counsel and the assisting entity or attorney have made, including the assisting entity's or attorney's good faith estimate of the date when the brief will be filed.

The assisting entity or attorney must serve a copy of the CSR on the lead appointed counsel and any appointed associate counsel being assisted, and must submit proof of service with the report.

Appointed counsel, as appropriate, may be requested to submit a supplemental CSR.

In all automatic appeals in which appointed counsel of record is required to submit a periodic CSR, and in all such cases and proceedings in which appointed counsel is not required to submit a CSR but nevertheless chooses to do so, the CSR must contain a certification or declaration under penalty of perjury by lead counsel that the contents of the CSR are true and correct. (Code Civ. Proc., § 2015.5.)

**Policy 6. Service of process**

Except as specified below, appointed counsel must serve his or her client, any separate counsel of record in any matter related to the same judgment, counsel of record for every other party, the trial court, the assisting entity or attorney for counsel for the defendant and any separate counsel of record, and trial counsel, with a copy of each motion, request for extension of time, brief, petition or other public document filed in this court or in the trial court on the client's behalf, including any supporting declaration, with attached proof of service. A declaration submitted in support of any motion or request may refer to and incorporate by reference matters set forth in a current "confidential 60-day status report" simultaneously provided only to this court. Counsel also must serve any additional person or entity as requested by this court.

Appointed counsel need not serve (1) trial counsel with any matter upon or after the filing in this court of the certified record on appeal; or (2) the trial court with any extension-of-time request related to appellate briefing.

If appointed counsel elects to serve the defendant personally with the document, counsel may indicate on the proof of service the date by which counsel will so serve the defendant (not to exceed 30 calendar days), and counsel shall thereafter notify the court in writing that the defendant has been served. In the alternative, appointed counsel need not serve the defendant with any specific document to be filed if counsel for the defendant attaches to the proof of service for that specific document (1) a declaration by the defendant stating that he or she does not wish to be served with that specific document, and (2) a declaration by counsel for the defendant stating that he or she has described to the defendant the substance and purpose of that specific document.

In all automatic appeals and capital-related habeas corpus proceedings in which counsel of record is required to provide the court with the original of a proof of service, such delivery must be evidenced by a certification or declaration under penalty of perjury. (Code Civ. Proc., § 2015.5.)

**Policy 7. Stays of execution**

In the absence of a moratorium on the death penalty, the court will consider a motion for a stay of execution only if such a motion is made in connection with a petition for a writ of habeas corpus, or to permit certiorari review by the United States Supreme Court.

**Policy 8. Withdrawal of counsel**

In the absence of exceptional circumstances — for example, when an appointed counsel becomes mentally or physically incapacitated — the court will consider a motion to withdraw as attorney of record only if appropriate replacement counsel is ready and willing to accept appointment for the balance of the representation for which the withdrawing attorney has been appointed (i.e., appellate representation, habeas corpus/executive clemency representation, or both).

## Appendix

This version of the Supreme Court Policies Regarding Cases Arising from Judgment of Death supersedes the version most recently amended on January 1, 2008, and the Appendix thereto, now-superseded portions of which provided as follows:

### **[SUPERSEDED] Supreme Court Policies Regarding Cases Arising from Judgment of Death**

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

The Supreme Court promulgates these standards as a means of implementing the following goals with respect to petitions for writs of habeas corpus relating to capital cases: (i) ensuring that potentially meritorious habeas corpus petitions will be presented to and heard by this court in a timely fashion; (ii) providing appointed counsel some certainty of payment for authorized legal work and investigation expenses; and (iii) providing this court with a means to monitor and regulate expenditure of public funds paid to counsel who seek to investigate and file habeas corpus petitions.

For these reasons, effective June 6, 1989, all petitions for writs of habeas corpus arising from judgments of death, whether the appeals therefrom are pending or previously resolved, are governed by these standards:

#### **1. Timeliness standards**

**1-1.** Appellate counsel in a capital case shall take and maintain detailed, understandable and computerized transcript notes and shall compile and maintain a detailed list of potentially meritorious habeas corpus issues that have come to appellate counsel's attention. In addition, if appellate counsel's appointment does not include habeas corpus representation, until separate counsel is appointed for that purpose, appellate counsel shall preserve evidence that comes to the attention of appellate counsel if that evidence appears relevant to a potential habeas corpus investigation. If separate "post-conviction" habeas corpus/executive clemency counsel (hereafter "habeas corpus" counsel) is appointed, appellate counsel shall deliver to habeas corpus counsel copies of the list of potentially meritorious habeas corpus issues, copies of the transcript notes, and any preserved evidence relevant to a potential habeas corpus investigation, and thereafter shall update the issues list and transcript notes as warranted. Appellate counsel shall consult with and work cooperatively with habeas corpus counsel to facilitate timely investigation, and timely preparation and filing (if warranted) of a habeas corpus petition by habeas corpus counsel.

Habeas corpus counsel in a capital case shall have a duty to investigate factual and legal grounds for the filing of a petition for a writ of habeas corpus. The duty to investigate is limited to investigating potentially meritorious grounds for relief that come to counsel's attention in the course of reviewing appellate counsel's list of potentially meritorious habeas corpus issues, the transcript notes prepared by appellate counsel, the appellate record, trial counsel's existing case files, and the appellate briefs, and in the course of making reasonable efforts to discuss the case with the defendant, trial counsel and appellate counsel. The duty to investigate does not impose on counsel an obligation to conduct, nor does it authorize the expenditure of public funds for, an unfocused investigation having as its object uncovering all possible factual bases for a collateral attack on the judgment. Instead, counsel has a duty to investigate potential habeas corpus claims only if counsel has become aware of information that might reasonably lead to actual facts supporting a potentially meritorious claim. All petitions for writs of habeas corpus should be filed without substantial delay. *[As amended effective July 29, 1993, and Jan. 22, 1998.]*

**1-1.1.** A petition for a writ of habeas corpus will be presumed to be filed without substantial delay if it is filed within 180 days after the final due date for the filing of appellant's reply brief on the direct appeal or within 36 months after appointment of habeas corpus counsel, whichever is later. *[As amended effective Sept. 19, 1990, Jan. 22, 1998, July 17, 2002, and Nov. 30, 2005.]*

**1-1.2.** A petition filed more than 180 days after the final due date for the filing of appellant's reply brief on the direct appeal, or more than 36 months after appointment of habeas corpus counsel, whichever is later, may establish absence of substantial delay if it alleges with specificity facts showing the petition was filed within a reasonable time after petitioner or counsel (a) knew, or should have known, of facts supporting a claim and (b) became aware, or should have become aware, of the legal basis for the claim. *[As amended effective Sept. 19, 1990, July 29, 1993, Jan. 22, 1998, July 17, 2002, and Nov. 30, 2005.]*

**Official Note No. 1:** The amendments to standards 1-1.1 and 1-1.2, effective July 17, 2002, changing "90 days" to "180 days," shall apply to all petitions for a writ of habeas corpus arising from a judgment of death that were pending before the Supreme Court on July 17, 2002, and to all such petitions filed after that date. *[Note added by Supreme Court order, July 26, 2002.]*

**Official Note No. 2:** The amendments to standards 1-1.1 and 1-1.2, effective November 30, 2005, changing "24 months" to "36 months," shall apply to all petitions for a writ of habeas corpus arising from a judgment of death that were pending before the Supreme Court on November 30, 2005, and to all such petitions filed after that date. *[Note added by Supreme Court order, Nov. 30, 2005.]*

**1-1.3.** *[Standard repealed effective Jan. 22, 1998.]*

**1-2.** If a petition is filed after substantial delay, the petitioner must demonstrate good cause for the delay. A petitioner may establish good cause by showing particular circumstances sufficient to justify substantial delay.

**1-3.** Any petition that fails to comply with these requirements may be denied as untimely.

**1-4.** The court may toll the 180-day period of presumptive timeliness for the filing of a capital-related habeas corpus petition (which begins to run from the final due date to file the appellant's reply brief in the appeal) when it authorizes the appellant to file supplemental briefing. The court will not toll before the 180-day presumptive timeliness period begins to run or after it has finished running. Ordinarily, the court will toll the 180-day presumptive timeliness period only when the appellant is represented by the same counsel on appeal and also for related habeas corpus/executive clemency proceedings.

If the court determines that it will toll such 180-day presumptive timeliness period, it will so provide in its order authorizing the appellant to file supplemental briefing. When the court provides for tolling of the 180-day presumptive timeliness period in its order authorizing the appellant to file supplemental briefing, it will determine a reasonable period of time for the appellant to devote to whatever supplemental briefing is authorized, add that period of time to the final due date to file the appellant's reply brief in the appeal, and indicate the new date by which the appellant may file a presumptively timely habeas corpus petition.

Other than under these circumstances, the court will not toll, or otherwise extend, the period in which to file a presumptively timely capital-related habeas corpus petition. *[Standard adopted effective Nov. 20, 2002.]*

## **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.

## SUPERSEDED POLICIES

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.]*

**[SUPERSEDED] Appendix to Supreme Court Policies Regarding Cases Arising from Judgments of Death Concerning Appointed Counsel’s Duties**

**I. DUTIES STATED IN THE POLICIES**

Appointed appellate counsel’s scope of representation includes the preparation and certification of the record on appeal; representation in the direct appeal before the California Supreme Court; 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 representation in the trial court relating to proceedings to set an execution date pursuant to Penal Code section 1193. (Policy 3, std. 2-1, 1st par.)

## SUPERSEDED POLICIES

Following the effective date of Proposition 66, the Death Penalty Reform and Savings Act of 2016, the responsibility for appointment of habeas corpus counsel falls to the sentencing court except insofar as this Court has expressly reserved the authority to make such appointments in an order transferring a habeas corpus petition to the superior court. (Gov. Code, § 68662; Pen. Code, § 1509.) To the extent this Court appointed habeas corpus counsel prior to the effective date of Proposition 66 and thereafter transferred a pending habeas corpus petition filed in this Court to the sentencing court, or to the extent this Court retained jurisdiction over the appointment of habeas corpus counsel in connection with a transferred petition, appointed habeas corpus counsel's scope of representation includes the (1) litigation of the transferred habeas corpus petition in the superior court, including any informal briefing and evidentiary hearing ordered by that court, unless and until the sentencing court appoints counsel, and (2) representation in the sentencing court relating to proceedings pursuant to Penal Code section 745 as may be authorized in advance by this Court, unless and until the superior court appoints counsel as contemplated by Penal Code section 1473, subdivision (e). Habeas corpus/executive clemency counsel appointed by this court prior to the effective date of Proposition 66 remains responsible for representation in the trial court relating to proceedings to set an execution date pursuant to Penal Code section 1227; and representation in executive clemency proceedings before the Governor of California. (Policy 3, std. 2-1, 2d and 3d pars.)

Habeas corpus counsel appointed by this Court in a capital case has a duty to investigate factual and legal grounds for the filing of a petition for a writ of habeas corpus. The duty to investigate is limited to investigating potentially meritorious grounds for relief that come to counsel's attention in the course of reviewing appellate counsel's list of potentially meritorious habeas corpus issues, the transcript notes prepared by appellate counsel, the appellate record, trial counsel's existing case files, and the appellate briefs, and in the course of making reasonable efforts to discuss the case with the defendant, trial counsel, and appellate counsel. (Policy 3, std. 1-1, 2d par.)

Habeas corpus counsel's duty to investigate does not impose on such counsel an obligation to conduct, nor does it authorize the expenditure of public funds for, an unfocused investigation having as its object uncovering all possible factual bases for a collateral attack on the judgment of death. Instead, habeas corpus counsel has a duty to investigate potential habeas corpus claims only if counsel has become aware of information that might reasonably lead to actual facts supporting a potentially meritorious claim. (Policy 3, std. 1-1, 2d par.)