

**PROCEDURES FOR THE CAPITAL HABEAS ATTORNEY
PANEL FOR THE CENTRAL DISTRICT OF CALIFORNIA
[REVISED 2-11-2014]**

I. DELEGATION OF AUTHORITY

The Central District of California has delegated authority to manage the Capital Habeas Attorney Panel to the Office of the Federal Public Defender (“FPDO”).

II. ESTABLISHMENT OF CAPITAL HABEAS ATTORNEY PANEL ADVISORY COMMITTEE

Pursuant to Local Rule 83-17.4 and General Order 13-14, the Court has established a Capital Habeas Attorney Panel Advisory Committee (“Advisory Committee”). This Advisory Committee shall be chaired by the Chief of the Capital Habeas Unit for the FPDO, and will include as members the CJA Resource Counsel for the FPDO, the Executive Director of the California Appellate Project or his or her designee, and members of the local legal community, as recommended by the FPDO and approved by the Chief Judge. The Advisory Committee will be comprised of at least five but no more than seven members. Community members will serve for terms of three years, renewable at the discretion of the Chief Judge. The recommendation of the FPDO will also be considered for the renewal of community members’ terms.

The Advisory Committee will review the applications, contact the references, and independently investigate prior casework to determine which applicants are qualified for membership on the panel. The Advisory Committee will recommend qualified applicants to the CJA Committee for addition to the panel. The CJA Committee will decide which applicants will be recommended to the Executive Committee. Before an applicant who was not previously screened by the Advisory Committee is recommended by the CJA Committee to the Executive Committee, the CJA Committee will ensure that the applicant is evaluated by the Advisory Committee. The Executive Committee’s decision to add an applicant to the panel must be approved by the full Court.

III. SELECTION, REAPPOINTMENT, AND REMOVAL OF PANEL MEMBERS

Approximately every three years, the Court will issue a public notice that applications for the Capital Habeas Attorney Panel are being accepted. To apply, a candidate must complete an application, submit three writing samples, and provide names of two or more references who are familiar with the applicant’s work, professional competence and reputation, commitment to indigent defense, qualifications to handle the rigors of federal capital habeas work, and time management skills.

Members are added to the panel for a term of six years, on the condition that they attend an initial mandatory orientation session and comply with applicable annual mandatory CLE requirements. Members have a continuing obligation to notify the Chairs of the CJA Committee and the Chief of the

Capital Habeas Unit for the FPDO **within seven days** of learning any new information that would have been responsive to the questions on the initial application relating to the following: (1) felony or misdemeanor arrests, charges, or convictions; (2) removal or voluntary resignation from any indigent defense panel (except for reasons of relocation or rotation as part of the panel's regular procedures) or removal from eligibility to receive appointments by any state, county, federal district or circuit court; (3) discharge, disbarment, suspension, disqualification, discipline, or failure to permit renewal of any license by any federal or state government, court, administrative agency, or bar association; (4) citation for contempt by any court or other body having the power of contempt; (5) any written inquiry by any court, administrative agency, or bar association concerning the attorney's professional conduct or professional ethics (including billing practices); (6) any admonishment or sanction by any court or agency; (7) any removal or request for removal from representation of a client (unless it was due to substitution by private counsel or due to a conflict with another client); and (8) any finding by any court, or any assertion by the attorney to a court, that the attorney has provided ineffective assistance of counsel. Panel members are required to forward to the chair of the CJA Committee and the Chief of the Capital Habeas Unit for the FPDO all relevant information and documents concerning such matters. A panel member's failure to comply with court orders, rules, regulations, or these policies and procedures may lead to discipline, including non-renewal or removal from the panel.

Approximately two months before a term expires, the FPDO will send out letters to panel members asking whether they want to be considered for another six year term. If renewal is desired, each panel member must send a letter of intent, along with a list of pleadings submitted in capital habeas cases in which he/she has served as counsel of record over the preceding six years.

Terms are renewable at the discretion of the CJA Committee. The Advisory Committee will recommend qualified applicants for renewal. In making its recommendation for renewal, the Advisory Committee will consider, among other things, the quality of the panel member's work, complaints and evaluations received from the Court, clients, or other counsel, sanctions threatened or imposed, other timeliness issues, the quality of other applications received, and whether the panel member's performance over the past six years has conformed to applicable standards for the provision of services to indigent criminal defendants and capital habeas petitioners, including but not limited to the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases available at:

http://www.americanbar.org/content/dam/aba/migrated/2011_build/death_penalty_representation/2003guidelines_authcheckdam.pdf. The views of the Central District bench, the Legal Services Unit, the Attorney General's Office, the Capital Habeas Unit of the FPDO and the Ninth Circuit Appellate Commissioner will also be solicited and considered. In some circumstances, the CJA Committee may determine that a member should be renewed for less than a six-year term.

Panel attorneys serve at the pleasure of the Court, as membership is a privilege, not a right. An attorney may be suspended or removed from the panel at any time at the discretion of the CJA Committee. The CJA Committee may also decide to do one or more of the following: renew an attorney for a term less than six years, place the attorney on probation, require training, or take any other action or impose any other conditions it deems appropriate. While the suspension or removal is considered final by the Court, an attorney may submit another application for panel membership, if he or she believes performance issues have been adequately addressed. An application may be submitted for a term beginning at least one full year after the suspension, removal, or non-renewal. The Advisory Committee may also

recommend to the CJA Committee that a panel member be removed. There is no right to review the CJA Committee's decisions concerning panel membership, including selection, non-renewal, and removal.

IV. ASSIGNMENT OF CASES

When the presiding judge determines that appointment of counsel is appropriate, the presiding judge directs the FPDO to locate counsel. The Court recognizes that, due to the complexities of representation on capital habeas cases, it may take some time to locate counsel from the panel ready and able to accept the appointment in a given case. The Court is also conscious of the need to locate counsel as expeditiously as possible in light of applicable deadlines for action.

With this in mind, the FPDO will first evaluate whether it is available and has the resources available to provide the necessary ancillary services to provide adequate legal representation to the client. If the FPDO can accept the appointment, the presiding judge will be notified and the Court's Legal Services Unit will prepare an appointment order to be submitted for the approval of the presiding judge. If the FPDO cannot accept the appointment, the FPDO will consult with the relevant state agencies and counsel to determine if state court counsel is available to and/or qualified to continue on the matter, with or without the appointment of additional federally qualified counsel. If such counsel is available for appointment, the recommendation for appointment of state court counsel, with or without additional federally qualified counsel, will be made to the presiding judge for his or her approval. If state court counsel represented the capital habeas petitioner on direct appeal, the petitioner must complete a written waiver of any possible conflict of interest. If neither the FPDO nor state court counsel is available, the FPDO will look to the panel for counsel. Experience, performance, existing case load and other commitments and the preference of counsel are considered in determining which panel member will be recommended for appointment to the assigned judge. Panel members may refuse two offers of appointment during their six year panel term.

If a panel member accepts an offer of appointment, he/she must consult with the FPDO on the appointment of second counsel. If second counsel is already on the panel, either as learned counsel or other counsel, the selected panel member may request that particular attorney be recommended for appointment as second counsel. In exceptional cases to achieve the goal of continuity of counsel, selected counsel may request the appointment of an attorney who is not a panel member. In such cases, his/her qualifications and other required information must be submitted to the Advisory Committee for consideration and recommendation for appointment. Once the recommendation for the appointment of an attorney as second counsel is made to the presiding judge, the Court's Legal Services Unit will prepare a proposed order for the assigned judge's approval.

In the usual case, no more than 30 days will be allowed for the process of selection and recommendation of counsel for appointment.

V. TRAINING

Panel members must provide certification of their attendance at an approved CLE event to the FPDO by December 31st of each calendar year. The CLE event may include local Central District training (provided by the Court and the FPDO) or a state or national capital habeas training, including the annual Capital Case Defense Seminar put on by California Attorneys for Criminal Justice and the California Public Defenders Association, the Annual National Federal Habeas Training presented by the Habeas Assistance and Training Counsel and the Administrative Office of the United States Courts, or any similar program.