

MEMORANDUM

TO: Counsel Accepting Appellate Appointments in the
California Court of Appeal, Second Appellate District

FROM: Jonathan B. Steiner
Executive Director,
California Appellate Project/Los Angeles

RE: New Court Requirements for Compensation In Habeas Corpus
Matters

DATE: May 16, 2018

The Second Appellate District of the California Court of Appeal has established guidelines for the compensation of counsel for work performed on petitions for writs of habeas corpus. These guidelines apply in all cases where counsel has concluded that a petition for a writ of habeas corpus should be filed in the Second Appellate District. These guidelines apply to the first phase of work on petitions for writs of habeas corpus that ends with the filing of the petition itself. The court's intent is not to discourage the filing of habeas petitions but to provide for a transparent system of compensation. The following comes directly from the court.

Counsel can be compensated for no more than 15 hours before seeking permission from the Administrative Presiding Justice or CAP. This work will be reviewed under current standards and includes the time necessary to prepare a memo to CAP or a motion to the APJ explaining the need for a habeas petition.

The California Appellate Project/Los Angeles (CAP) or the Administrative Presiding Justice of the Second Appellate District must pre-approve any work on a habeas petition that is over 15 hours of attorney time.

Under the court's new policy, this is an absolute, non-waivable requirement for compensation of counsel for work performed on a habeas petition. The necessity for approval applies whether the case is assigned on an independent or assisted basis and whether the case involves criminal or dependency judgments.

The only exception to this is when counsel appointed for the direct appeal, or counsel specifically appointed by the court for the purposes of a habeas petition, is directed to work on a habeas petition *on the court's initiative*. In all such cases, CAP is to supervise counsel and shall provide counsel with assistance. CAP's supervision of counsel is to include monitoring attorney time and expenses to ensure the most economical and effective use of resources.

CAP can approve payment for work on the preparation of habeas petitions where each of the following conditions exist:

- (1) The projected petition intends to focus on no more than three principal issues,
- (2) Attorney time spent on the projected petition will not exceed 80 hours, and
- (3) CAP concludes, in consultation with counsel, that there is a reasonable probability that the petition will meet with success.

A proposal for compensation on a habeas petition that does not conform to these criteria must be submitted to the Administrative Presiding Justice. Such an application should be filed under seal. The division noted on the cover should be "Division p," and counsel should not include the "B number" of the underlying case on the cover. Finally, there must be a notation that reads "Attention: Managing Attorney."

There is no change in the previous policy that CAP can approve up

to \$1500.00 for investigators or experts. Should this necessity occur during the 15 hour period, it should be raised with CAP and approval will be based on a clear showing by counsel that such work is necessary to determine if there is a reasonable probability of success. If counsel requires more than \$1500 for such expenses, a motion must be made to the court under the same procedures as used for approval of compensation.

Neither the court nor CAP's approval for payments to investigators or experts constitutes pre-approval for the habeas petition.

Where CAP has pre-approved a proposed habeas petition and, while the work is being done, it appears that the criteria for CAP's approval no longer exist or are going to be exceeded, permission to perform compensated work must be obtained from the Administrative Presiding Justice before the work is performed. Please note that permission will be denied if work exceeding 80 hours has been done, and permission is sought retroactively for such work.

It is an absolute requirement that CAP closely monitor and work with counsel on all habeas petitions, whether work for that petition was approved by CAP or by the Administrative Presiding Justice. The court expects that counsel will set up a schedule with the CAP attorney assigned to the case in order to report progress on the petition on a regular schedule whether the appeal was assigned on an assisted or independent basis.

The procedures in this memo will not be applied where petitions have already been filed. However, if counsel is currently working on a habeas and has spent more than 15 hours, application should be made to CAP for approval if counsel expects to complete the habeas within 80 hours or to the court if counsel expects to spend or has already spent more than 80 hours. In these situations, CAP and the court will take into consideration that the work was done before the receipt of this memo.

After the filing of the petition, if the court issues an order requiring

further work in the case, counsel will be compensated for any work done pursuant to the order of the court under the same policies which currently exist.

Finally, counsel may file a habeas petition if, in his or her professional judgment, such a filing is indicated with or without the permission. While the permission to prepare a habeas petition is a necessary condition for compensation for habeas work from public funds, it does not mean that counsel needs permission to file a habeas petition.