

The California Appellate Court Appointed Counsel Program
(Background Information for Assessment of Panel Attorney
Eligibility for Student Loan Forgiveness)
Prepared December 2023

The five California Court of Appeal appellate projects provide the following background to assist in the assessment of whether California’s court-appointed appellate panel attorneys are eligible for forgiveness of student loans.

A. California’s Court Appointed Counsel (CAC) Program Overview

In 1976, the California Office of the State Public Defender (OSPD), a state agency, was formed to provide representation for indigent criminal appellants. In that era, OSPD handled no more than about one-third of the annual indigent appeals. The remainder of the cases were appointed to contracted panel attorneys.

In 1983, Governor George Deukmejian cut OSPD’s funding. For indigent appellants not represented by OSPD, this often resulted in poor or inconsistent representation and limited oversight. Moreover, due to a steadily growing death row, “since 1990, OSPD’s mandate from all three branches of government has been redirected toward an exclusive focus upon death penalty cases.” ([Office of State Public Defender, website “About Us”](#).)

In answer to this crisis, and even prior to the 1990 redirection of OSPD’s mission, the California courts contracted with private sector nonprofit law firms—the appellate projects—to oversee panels of contract attorneys to serve as appointed counsel in Court of Appeal cases. (The appellate projects also provide direct representation in a small percentage of the cases.) The five California appellate projects still operate today under contract with the State of California, subject to administrative oversight by the California Judicial Council, now called the CAC program. The appellate projects administer their court-appointed counsel panel and ensure quality control for indigent appellate representation in non-capital criminal, civil commitment, juvenile delinquency, and juvenile dependency appeals.

B. In California, Statutory Limits and State Budget Bills Limit Employment Availability of Attorneys to Handle Court-Appointed Appeals

Due to statutory limits and due to state budget bill funding limitations, OSPD’s and the appellate projects’ employed staff attorneys can only handle a tiny percentage of non-capital appeals, with the vast majority of the cases being handled by the contracted panel attorneys. OSPD’s mandate (and funding) is to provide representation in death penalty cases in the California Supreme Court (Cal. Gov. Code, sec. [15421](#)(a) and (b)) and to train trial lawyers through its Indigent Defense Improvement Division and through grants (Cal. Gov. Code, secs. [15420](#)(b) and [15421.1](#)). OSPD attorneys may provide direct representation in non-capital Court of Appeal cases if either it has fulfilled its capital-case responsibilities or if “a limited number of those cases is necessary for staff training.” (Cal. Gov. Code, secs. [15421](#)(c).) Moreover, Section 15421 does not appear to authorize OSPD to handle any civil commitment, juvenile delinquency, or juvenile dependency appeals.

As is true for OSPD, the annual state budget bills do not fund the appellate projects at a level sufficient to hire the number of staff attorneys required to handle all the appeals. As [the state judiciary’s website](#) describes the program, “The Judicial Council of California staff works with nonprofit organizations (“projects”) that recommend to the Courts of Appeal *the appointment of private attorneys to represent indigent appellants.*” (Emphasis added.)

To meet this challenge, the Courts of Appeal must rely on the panel attorneys, and this is borne out by the numbers. In Fiscal Year 2022-2023, contracted panel attorneys handled 9,019 court-appointed appeals, appellate project staff attorneys handled 634, and OSPD handled 4. This is not surprising in that OSPD has 61¹ attorneys who must dedicate most of their time to death penalty cases and trial attorney training, and the appellate projects have approximately 78 attorneys who must dedicate most of their time to oversight of the contracted panel attorneys. In contrast, there are (as of July 1, 2023) 663 contracted panel attorneys.

Provider	Number of Attorneys	Main Duties	Number of Non-Capital Appeals as Counsel of Record in FY 2022-2023	Percentage of Non-Capital Appeals as Counsel of Record in FY 2022-2023
OSPD	61	Death penalty appeals in the State Court of Appeal; training trial attorneys	4	.04%
Appellate Projects	78	Oversight of contracted panel attorneys	634	6.56%
Contracted Panel Attorneys	663	Direct representation in court-appointed appeals	9,019	93.39%

In sum, the annual state funding bills do not fund jobs for most of the attorneys doing this public service work. Without a future state budget bill providing significantly more funding than historically provided, the vast majority of non-capital court-appointed appeals must continue to be handled by the contracted panel attorneys.

C. Practical Implications of CAC Structure

In this public/private pairing between court and appellate project, the panel attorney is consigned to the role of a contractor who is appointed by the court and compensated by the State of California as a state “vendor.” As such, they are provided no employment benefits such as medical insurance, sick leave, a retirement plan, or other employer benefits. Although ethically obligated to competently represent their client and complete each case they accept

¹ Number reported by OSPD as of December 4, 2023.

appointment for, the panel attorney is not considered an employee for either the project, or the state, under IRS definitions.

To receive compensation, a panel attorney submits a claim for time worked on each case and is paid at a rate determined by case category and type of appointment, earning—under current rates—between \$110-\$130 per hour. The California State Controller issues the “vendor attorney” an IRS 1099 form for annual accumulated earnings.

D. Contact Information for Inquiries

For additional information or clarifying questions, please contact the Executive Director at any of the California Court Appointed Counsel appellate projects listed below.

First Appellate District First District Appellate Project 1212 Broadway, Suite 1200 Oakland, CA 94612 (415) 495-3119	Second Appellate District California Appellate Project/Los Angeles 520 S. Grand Ave., 4th Floor Los Angeles, CA 90071 (213) 243-0300
Third and Fifth Appellate Districts Central California Appellate Program 2150 River Plaza Dr., Ste. 300 Sacramento, CA 95833 (916) 441-3792	Fourth Appellate District Appellate Defenders, Inc. 555 West Beech St., Suite 300 San Diego, CA 92101 (619) 696-0282
Sixth Appellate District Sixth District Appellate Program 95 S. Market Street, Suite 570 San Jose CA 95113 Phone: 408 241-6171	