

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Kenneth Kann, Managing Attorney, Office of the General Counsel
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DATE: October 19, 2004

SUBJECT: Technical Changes to Fourth Installment, Revision of Appellate
Rules (repeal Cal. Stds. Jud. Admin., §§ 6.5 and 20) (Action
Required)

Issue Statement

There was an inadvertent omission in the fourth installment of the revision of the appellate rules, adopted by the Judicial Council on August 27, 2004, and taking effect on January 1, 2005. Sections 6.5 and 20 of the Standards of Judicial Administration should have been repealed.

Recommendation

Staff recommends that the Judicial Council, effective January 1, 2005, repeal sections 6.5 and 20 of the Standards of Judicial Administration, because the substance of these standards has been adopted in rules 60(e) and 76.5(b)–(c). The text of sections 6.5 and 20 is attached at pages 3–5.

Rationale for Recommendation

As part of the fourth installment of its revision of the appellate rules, the Judicial Council amended rule 60(e) to incorporate the substance of section 6.5 of the Standards of Judicial Administration and amended rule 76.5(b)–(c) to incorporate the substance of section 20(a)–(b) of the standards. Section 6.5 of the standards provides guidelines for processing habeas corpus petitions based on facts occurring outside the appellate district in which they are filed; section 20(a)–(b) of the standards provides guidelines for appointing counsel in criminal appeals in the Courts of Appeal. The council had previously amended rule 76.6 to incorporate the substance of section 20(c) of the standards, which provides guidelines for appointing counsel in death penalty appeals in the Supreme Court. Each of the cited sections of the standards should have been repealed when the above

amendments were adopted, but through oversight the repeal was not effectuated. The sections should now be repealed.

Alternative Actions Considered

There is no alternative other than to allow the cited sections of the standards to continue to duplicate recently revised rules of court, possibly causing confusion.

Comments From Interested Parties

This proposal was not circulated for comment because it is wholly technical and noncontroversial in nature.

Implementation Requirements and Costs

There are no implementation requirements or costs.

Attachments

Sections 6.5 and 20 of the California Standards of Judicial Administration are repealed, effective January 1, 2005.

~~Section 6.5. Habeas corpus petitions unrelated to appellate district~~

~~A Court of Appeal should ordinarily deny, without prejudice, a petition for a writ of habeas corpus that is based primarily on facts occurring outside the appellate district. These include petitions that question (1) the validity of judgments or orders of trial courts located outside the appellate district, and (2) conditions of confinement or the conduct of correctional officials outside the appellate district.~~

~~When a petition is denied solely on this basis, the order should so state and indicate the appropriate court in which to file the petition.~~

~~Section 20. Guidelines for appointment of counsel in criminal appeals~~

~~(a) [General] Each appellate court, when establishing and maintaining lists of qualified counsel for appointment in criminal appeals as required by rule 76.5, should follow the guidelines in this section to match each appointed attorney's skills and experience with the demands of the case.~~

~~Before appointment of counsel in a case, the court should determine the demands of the case by reviewing the trial court file or by other appropriate means. In determining the demands of the case, the following factors should be considered: the length of the sentence; the novelty or complexity of the issues; the length of the trial and of the reporter's transcript; and any questions relating to the competency of trial counsel.~~

~~(b) [Courts of Appeal] Each Court of Appeal should maintain three lists of qualified attorneys. The lists should be based on the following minimum qualifications:~~

~~*List I* (For appointment to cases in which probation was granted, or the sentence is five years or less in state prison):~~

- ~~(1) active membership in the State Bar;~~
- ~~(2) attendance at one approved appellate training program;~~
- ~~(3) participation in one trial or appellate brief; and~~

~~(4) submission of one sample of the attorney's writing for review by the court or administrator.~~

~~List II (For appointment to cases in which the sentence is five years to fifteen years in state prison):~~

~~(1) active practice of law for 18 months in the California state courts or equivalent experience;~~

~~(2) attendance at two approved appellate training programs;~~

~~(3) completion of two appellate cases; and~~

~~(4) submission of two appellant's opening briefs written by the attorney, for review by the court or administrator.~~

~~List III (For appointment to cases in which the sentence is fifteen years to life in state prison):~~

~~(1) active practice of law for three years in the California state courts or equivalent experience;~~

~~(2) attendance at two approved appellate training programs;~~

~~(3) completion of five appellate cases; and~~

~~(4) submission of two appellant's opening briefs written by the attorney, for review by the court or administrator.~~

~~(e) [Supreme Court] The Supreme Court should maintain a list of attorneys for appointment in death penalty cases, based on the following minimum qualifications:~~

~~(1) active practice of law for four years in the California state courts or equivalent experience;~~

~~(2) attendance at three approved appellate training programs, including one program concerning the death penalty;~~

~~(3) completion of seven appellate cases, one of which involves a homicide; and~~

~~(4) submission of two appellant's opening briefs written by the attorney, one of which involves a homicide, for review by the court or administrator.~~