



# NEWS RELEASE

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## **Supreme Court Revises Procedures in Death Penalty Appeals**

### *Confidential Status Reports and Service of Process*

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San Francisco—The California Supreme Court today announced amended and new practices and procedures to be followed by appointed counsel in capital appeals and related habeas corpus petitions pending before the court.

These practices and procedures are related to those previously announced in August 2001 (<http://www.courts.ca.gov/news2001-44.htm>), and thereafter amended effective July 27, 2005, concerning information that must be provided by counsel who represent parties in pending capital cases when requesting an “extension of time” in which to file briefs and other documents.

The new practices and procedures announced today (1) require lead appointed counsel in capital cases to declare or certify under penalty of perjury that the contents of periodic “Confidential Status Reports” are true and correct and (2) require that proofs of service comply with section 2015.5 of the Code of Civil Procedure. These measures are intended to assist counsel and the court in monitoring the progress of capital appeals and related habeas corpus petitions.

The new procedures were adopted at the court’s regular monthly administrative conference and will become effective July 1, 2011, as additions to the procedures previously adopted by the court in August 2001 and amended in July 2005.

An addendum, setting out the various procedures and amendments, follows.

## **Addendum**

### ***Procedures and policies adopted by the California Supreme Court on August 22, 2001, as amended July 27, 2005, and May 18, 2011***

Parts A-D below were adopted on August 22, 2001, effective October 1, 2001. Part D below was amended effective July 27, 2005. New parts E & F, below, were adopted on May 18, 2011, and will be effective on July 1, 2011.

#### ***A. Contents of Declarations in Support of Extension of Time (EOT) Requests***

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. (This information is not required if the EOT request concerns only habeas corpus briefing.)
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.
4. 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.

#### ***B. Contents of Appointed Counsel's Confidential Status Reports***

In accordance with longstanding court practice, until appointed appellate counsel files the appellant's opening brief, and until appointed habeas corpus/executive clemency counsel files a concurrent capital-related state habeas corpus petition, a current confidential status report must be submitted every 60 days. Lead appointed counsel must serve a copy of the confidential status report on the assisting entity or attorney and on any appointed associate counsel, and must submit proof of service with the report. All 60-day confidential status reports 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.

### *C. Supplemental Declarations and Confidential Status Reports*

As appropriate, counsel of record may be requested to submit a supplemental declaration to establish good cause for any requested EOT. Similarly, appointed counsel, as appropriate, may be requested to submit a supplemental confidential status report.

### *D. Extensions of Time Related to Habeas Corpus Informal Briefing*

Extensions of time granted by the court for habeas corpus informal briefing (informal response to a habeas corpus petition, or a reply to an informal response to a habeas corpus petition) will be provided, pursuant to the court's previous practice, in 60-day intervals. This has been the internal operating policy of the court since July 27, 2005.

### *E. Declarations in Support of Confidential Status Reports*

In all automatic appeals and capital-related habeas corpus proceedings in which appointed counsel of record is required to submit a periodic confidential status report (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.)

### *F. Proofs of Service*

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 (Policy 4, Supreme Court Policies Regarding Cases Arising From Judgments of Death ["Service of process by counsel for defendant"]), such delivery must be evidenced by a certification or declaration under penalty of perjury. (Code Civ. Proc., § 2015.5.)

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