

## KEY RESOURCES

Available on the California Courts  
Web site: [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

- ★ Application Information  
[www.courtinfo.ca.gov/courts/supreme/dpenalty.htm](http://www.courtinfo.ca.gov/courts/supreme/dpenalty.htm)
- ★ Rule 8.605 of the California Rules of Court  
[www.courtinfo.ca.gov/rules/index.cfm?title=eight&linkid=rule8\\_605](http://www.courtinfo.ca.gov/rules/index.cfm?title=eight&linkid=rule8_605)
- ★ Supreme Court Policies Regarding Cases Arising From Judgments of Death  
[www.courtinfo.ca.gov/courts/supreme/dpenalty.htm](http://www.courtinfo.ca.gov/courts/supreme/dpenalty.htm)
- ★ Payment Guidelines for Appointed Counsel Representing Indigent Criminal Appellants in the California Supreme Court  
[www.courtinfo.ca.gov/courts/supreme/dpenalty.htm](http://www.courtinfo.ca.gov/courts/supreme/dpenalty.htm)
- ★ Guidelines for Fixed Fee Appointments, on Optional Basis, to Automatic Appeals and Related Habeas Corpus Proceedings in the California Supreme Court  
[www.courtinfo.ca.gov/courts/supreme/dpenalty.htm](http://www.courtinfo.ca.gov/courts/supreme/dpenalty.htm)
- ★ Internal Operating Practices and Procedures of the California Supreme Court  
[www.courtinfo.ca.gov/courts/supreme/iopp.htm](http://www.courtinfo.ca.gov/courts/supreme/iopp.htm)

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### California Appellate Project—

#### San Francisco (CAP-SF)

101 Second Street, Suite 600  
San Francisco, CA 94105  
415-495-0500

### Habeas Corpus Resource Center

303 Second Street, Suite 400 South  
San Francisco, CA 94107  
415-348-3800

# CALIFORNIA SUPREME COURT

**FOR FURTHER  
INFORMATION,  
PLEASE CONTACT:**

**ROBERT REICHMAN**

Supreme Court  
Automatic Appeals Monitor  
350 McAllister Street  
San Francisco, CA 94102  
415-865-7562  
[automatic.appeals@jud.ca.gov](mailto:automatic.appeals@jud.ca.gov)

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**APPOINTMENTS  
IN CAPITAL CASES  
IN THE CALIFORNIA  
SUPREME COURT**

APRIL 2009

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**FREDERICK K. OHLRICH**

Clerk of the Supreme Court

## **BACKGROUND**

As of April 2009, 84 indigent men and women under sentence of death in California do not have an attorney to represent them on appeal and related state habeas corpus proceedings. In addition, each year nearly 30 judgments of death are entered in this state, and the number of persons in need of representation continues to grow.

The Supreme Court has set as one of its highest priorities the recruitment and appointment of qualified appellate and habeas corpus counsel to represent indigent persons under sentence of death.

The Supreme Court has initiated a number of innovations to attract counsel to its capital representation program, including enhanced training opportunities, a fixed fee payment option, expedited payments in cases handled on a time-and-costs basis, and expanded outreach and recruitment efforts.

Further, statutory mandates have improved both fee and expense provisions in the area of capital representation. Legislation enacted in 1997 provided funds to authorize an increase in the hourly rate paid to appointed counsel as well as commensurate increases in the fixed fee payment categories, authorized additional resources for investigative services and expenses, and created the Habeas Corpus Resource Center (HCRC) to act as appointed counsel and assist other appointed counsel in the presentation of habeas corpus petitions.

The Supreme Court encourages you to take a fresh look at the possibilities and challenges posed by a capital appointment.

## **QUALIFICATIONS**

Rule 8.605 of the California Rules of Court sets forth the qualifications of counsel in death penalty appeals and related habeas corpus proceedings.

Under rule 8.605, you may qualify for appointment through extensive experience in criminal appeals and habeas corpus proceedings. You also may qualify by alternative means designed to open up opportunities for attorneys with extensive experience in civil trials or appeals, academic service, or judicial or prosecutorial work.

## **TRAINING OPPORTUNITIES**

To meet the qualifications under rule 8.605, you may enroll in a variety of training and educational seminars provided by the California Appellate Project (CAP) in San Francisco, the HCRC, and other organizations.

The Supreme Court has compiled a reading list of cases, law review articles, and other materials on representation in capital cases. You may apply independent study hours toward the training requirement.

## **APPOINTMENT OPTIONS**

You may be appointed to both the appeal and related habeas corpus/executive clemency aspects of a case (a “dual” appointment). You also may opt for an appointment to either the appeal or the habeas corpus/executive clemency proceedings.

## **LEAD AND ASSOCIATE COUNSEL**

Appointed “lead” counsel of record is responsible for the overall conduct of the capital case and for supervising the work of appointed associate counsel and any nonappointed, supervised counsel.

As an alternative to a lead counsel appointment, you may seek appointment to a capital case as “associate” counsel of record. An associate counsel does not have primary responsibility for the case and, instead, works under the supervision of lead counsel. Associate counsel must meet the same minimum qualifications for appointment as lead counsel and has casewide responsibility to perform the duties for which that attorney was appointed (appellate duties, habeas corpus duties, or both appellate and habeas corpus duties in a “dual” appointment).

## **SUPERVISED COUNSEL**

Even if you do not currently qualify for appointment as counsel under rule 8.605, there are opportunities for supervised counsel to participate in these cases by working with appointed counsel to gain the knowledge and experience required for appointment. The Supreme Court assists in matching interested supervised counsel with appointed counsel for this purpose.

Should you seek to pursue this option, please forward a letter of interest and a recent resume to Robert Reichman, Automatic Appeals Monitor, at the address on the back of this brochure.

## **PAYMENT OPTIONS**

You may choose to be compensated on either a time-and-costs or a fixed fee basis. Compensation for time-and-costs appointments is \$145 per allowable hour plus specified incidental expenses. The court has streamlined the payment of hourly compensation. Compensation for fixed fee appointments is determined by case length and complexity. There are five fixed fee categories for appeal and dual appointments, and three fixed fee categories for habeas corpus appointments. Dual fixed fee categories range from \$160,000 for the least complex cases to a \$368,000 base fee for the most complex cases, and contain 11 junctures for progress payments.

## **INVESTIGATION SERVICES AND EXPENSES**

Whether you are appointed for habeas corpus representation on a time-and-costs or a fixed fee basis, you may incur and obtain reimbursement for up to \$50,000 for reasonable habeas corpus investigation services and expenses without preapproval from the Supreme Court, plus additional reimbursement for the cost of photocopying defense counsel’s trial files.

## **CASE ASSISTANCE**

Assistance is available to you for the duration of the appeal and related habeas corpus/executive clemency proceedings. Shortly after your appointment, you are partnered with a “buddy” attorney at CAP who will be available for consultation on legal and procedural matters. In addition, the HCRC is developing a Web site that will contain practice guides, briefs, and sample pleadings.

## **CONTACT INFORMATION**

The Supreme Court urges you to consider applying for a capital case appointment. The court believes that you will find acceptance of this important responsibility challenging and rewarding. Please contact Automatic Appeals Monitor Robert Reichman (415-865-7562) for further information.