

Numbers of Appointed Counsel

- There are 800 private attorneys on the Court of Appeal panel; 500 do fulltime appointed work.
- CADC has nearly 500 members.
- Approximately 140 private practitioners are appointed to handle capital post conviction cases (either direct appeal or habeas), handling far more cases than the state agencies.
- Most new attorneys appointed to death penalty post-conviction cases come from the Court of Appeal panel.

Counsel Demographics Poses a Serious Problem to Attorney Retention

- A CADC membership poll found that 67% were over the age of 50. Some estimate that by 2010, 11% of the current criminal appellate practitioners will be eligible for retirement. By 2015, almost 25% of the counsel currently appointed in California criminal appeals will be retirement eligible.
- This will have the greatest impact on counsel in capital cases because significantly greater experience is needed to join the capital panel and because the cases take so long, older individuals cannot accept them.

Impact of Capital Case Recruitment on Court of Appeal Panel

- The increase in attorneys accepting appointment in capital cases has been achieved by recruiting from the Court of Appeals panel, which amounts to robbing Peter to pay Paul and is creating a crisis of counsel in non-capital appeals.

- Each experienced senior panel attorney assumes appointments in 8-12 new criminal appeals per year. A panel attorney in the capital case system assumes only one new capital case every two or three years. Thus, for every new capital post conviction appointment, the Courts of Appeal must search for new counsel to assume 8-12 of the most difficult non capital appeals.
- The numbers of attorneys at the highest two levels of the Court of Appeal Panel has remained stagnant for a decade. Currently, there are approximately 95 level V counsel and approximately 150 level IV counsel, for a total of 250 attorneys. Attorneys are not advancing from the lower levels to the higher levels.
- In addition, more and more criminal appeals attorneys are needed because of the increasing California population. The Fourth Appellate District, which encompasses Riverside and San Bernardino, now handles more criminal appeals than the Second Appellate District, a district that encompasses the entire Los Angeles area.
- As a result, some appellate projects have launched recruitment drives.

Impact of Inadequate Compensation

- The hourly rate for appointed capital counsel is \$145/hr.
- In the federal system, experienced lead counsel can receive \$166/hr.
- In 1998, the capital counsel compensation rate was \$95/hr.
- Adjusting for inflation, to stay even with the 1998 rate, the present hourly rate would have to be \$159/hr. Thus, the value of the current capital counsel rate has actually decreased 9%.
- As noted by Judge Alarcon, this rate is nowhere near the actual market rate for the skills and experience required of capital counsel.

- Chronic under-funding applies not only to the capital panel, but the Court of Appeal panel as well.
- In 1989 the California Legislature set the compensation rate for the Court of Appeal panel at \$65/ hr. The Legislature later created a three tier payment system, with levels of \$85/hr, \$95/hr and \$105/hr.
- Adjusting for inflate, just to stay even with the 1989 rate, the current entry level rate would have to be \$110/hr, or \$5/hr above the highest hourly rate for the most experienced counsel now.
- Entry level counsel in 1989 made almost 10% more per hour than the most experienced counsel doing the hardest cases in 2007.
- The appellate projects, whose responsibility it is to recruit and train new panel attorneys, have repeatedly suffered cuts in that portion of their budgets allocated to assistance and training of new counsel, making recruitment even more difficult. New attorneys are now often left to “sink or swim.”
- The funding for habeas investigation is even worse. Attorneys are not compensated for their actual costs. They cannot retain the services of highly regarded experts, in part because they are out spent by better funded agencies. As a result, most private counsel simply refuse to take appointments in capital habeas proceedings.