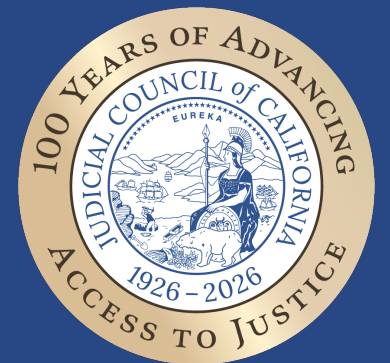


Report of the 2025 Proposition 66 Counsel Working Group

Hon. Laurie M. Earl, Chair, 2025 Proposition 66 Council Working Group

Mr. Michael I. Giden, Principal Advisor, Legal Services

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Overview

- Proposition 66 passed in November 2016
- Intended to expedite review of California capital cases
- Aimed to expand “the pool of available lawyers,” for capital habeas corpus petitioners
- Few new appointments have been made
- Chief Justice formed working group to investigate barriers and consider possible solutions

Major Barriers to Appointments

- Act did not provide funding for capital habeas corpus counsel
- Cases are complex, lengthy, and costly
- Declining availability of experienced lawyers

Before Proposition 66

- Supreme Court appointed capital habeas corpus counsel
 - Legislature funded Supreme Court to pay counsel
 - Legislature funded 34 attorneys at Habeas Corpus Resource Center (HCRC)
- No appellate habeas corpus counsel needed

After Proposition 66

- Superior courts now responsible for appointment of capital habeas corpus counsel
 - No funding identified for new appointments
 - Legislature continues funding of 34 HCRC attorneys primarily to complete existing Supreme Court appointments
- Introduces right to appeal superior court habeas corpus decisions
 - No funding identified for new appellate appointments

Proposition 66 Rules Working Group (2018–19)

Council adopted, effective April 2019, rules of court on:

- Qualifications for capital habeas corpus counsel
- Procedures for habeas corpus petitions and related appeals
- Procedures for superior court recruitment and appointment of counsel for capital habeas corpus counsel

Proposition 66 Rules Working Group (2018–19), cont'd

Council also adopted rule 4.562, requiring Courts of Appeal to form regional committees to:

- Assist superior courts with recruiting and accepting applications from qualified attorneys;
- Determine if applicants meet the minimum qualifications; and
- Assist superior courts in matching attorneys from statewide panel to a specific case, if requested.

Limited Progress on New Appointments (2019–26)

- Only one qualified attorney remains on statewide panel
- Few new appointments since 2016
- No successful private-counsel appointments by superior courts
- 344 individuals await habeas corpus counsel
- 42 petitioners await appellate habeas corpus counsel
- Habeas corpus appeals are stayed due to lack of funding for counsel

Chief Justice Establishes 2025 Proposition 66 Counsel Working Group

- Review appointment processes, timeframes, and qualification requirements
- Explore improved methods for recruiting and appointing counsel
- Assess the viability of pro bono counsel
- Consider revisions to rules, standards, and forms

Speakers

- **Mr. Bill Bilderback**, Senior Assistant Attorney General and Statewide Capital Case Coordinator, California Department of Justice
- **Ms. Pamela Gomez**, Chief of Capital Habeas Unit, Office of the Federal Public Defender, Central District of California
- **Mr. David Lash**, Managing Counsel for Pro Bono and Public Interest Services, O'Melveny & Myers LLP
- **Mr. Joseph Schlesinger**, Executive Director, California Appellate Project—San Francisco
- **Ms. Elisabeth A. Semel**, Clinic Co-Director and Clinical Professor of Law, Berkeley Law Death Penalty Clinic
- **Ms. Nisha Shah**, Interim Executive Director, Habeas Corpus Resource Center
- **Mr. Thomas Sone**, Public Defender, Law Offices of the Public Defender, San Bernardino County
- **Ms. Aimee Vierra**, Supervisor of Writs and Post-Conviction Unit, Law Offices of the Public Defender, Riverside County

Observations by Speakers

- ***Benefits of timely appointment:*** better access to evidence, earlier resolution
- ***Recruitment challenges:*** lack of funding, challenging issues, long timeframes, substantial out of pocket costs
- ***Attorney training and career path:*** Retirements and few recent appointments reduce available mentors and qualified practitioners

Funding Issues: Superior Court Petitions

- Act does not make a specific government entity responsible for paying counsel
- Statute prohibits superior courts from paying for indigent defense
- Counties likely bear responsibility for funding indigent defense counsel (public defenders and appointed private)
- Many counties struggling to fund indigent defense counsel
- No counties currently fund capital habeas corpus counsel

Working Group Suggestions

Funding:

- Communicate with other branches of government about county responsibility for funding counsel for habeas corpus petitions in the superior courts
- Continue to seek Budget Act funding for habeas corpus appellate counsel
- Consider seeking funding for training and recruitment activities

No Rule Changes:

- No evidence that current rules are an impediment to appointment
- Premature to amend the rules

Working Group Suggestions, cont'd

Reactivate Regional Committees:

- Provide training for committees and courts for recruitment and appointment of counsel
- Encourage pro bono partnerships with law firms, innocence projects, and law school clinical programs

Early Settlement Efforts:

- Encourage district attorneys and public defenders to engage in early settlement discussions before initial petition is filed

Questions?