



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 24-029

For business meeting on May 17, 2024

Title

Criminal Procedure: Appointment of Counsel
for Claims Filed Under Penal Code Section
1473(e)

Agenda Item Type

Action Required

Effective Date

September 1, 2024

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 4.553

Date of Report

March 5, 2024

Recommended by

Criminal Law Advisory Committee
Hon. Brian M. Hoffstadt, Chair

Contact

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Executive Summary

The Criminal Law Advisory Committee recommends the adoption of rule 4.553 of the California Rules of Court to implement legislation requiring the Judicial Council to develop qualifications for the appointment of counsel in superior court habeas corpus proceedings under Penal Code section 1473(e). Section 1473(e) provides for relief under the California Racial Justice Act of 2020, which prohibits the state from seeking or obtaining a conviction or sentence based on race, ethnicity, or national origin and allows petitioners to make claims for relief based on violations of the act.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council, effective September 1, 2024, adopt California Rules of Court, rule 4.553, on qualifications for appointed counsel for claims under Penal Code section 1473(e).

The proposed rule is attached at pages 6–7.

Relevant Previous Council Action

Because this rule addresses a new statutory requirement, there is no relevant previous council action.

With regard to implementation of other aspects of the California Racial Justice Act of 2020 (Racial Justice Act), the Appellate Advisory Committee and the Criminal Law Advisory Committee are recommending amendments to rules 4.551, 8.385, and 8.386 of the California Rules of Court and revisions to *Petition for Writ of Habeas Corpus* (form HC-001), *Motion to Vacate Conviction or Sentence* (form CR-187), and *Order on Motion to Vacate Conviction or Sentence* (form CR-188). These recommendations are also anticipated for consideration by the Judicial Council at its May 17, 2024, meeting.

Analysis/Rationale

The committee recommends adoption of a new rule of court to fulfill the requirements of Penal Code section 1473.1.¹ Section 1473.1 was enacted on June 30, 2023,² and requires the Judicial Council to develop standards for appointment of private counsel in superior court for claims filed under section 1473(e) by individuals who are not sentenced to death.³ Section 1473(e) addresses petitions for writ of habeas corpus with a claim for relief under section 745,⁴ which prohibits the state from seeking or obtaining a conviction or sentence on the basis of race, ethnicity, or national origin. The statute requires that the standards include a minimum of 10 hours of training on the Racial Justice Act.

The recommended rule is modeled in part after two other rules in the California Rules of Court addressing counsel qualifications in criminal and related matters: rule 4.117, Qualifications for appointed trial counsel in capital cases, and rule 8.652, Qualifications of counsel in death penalty–related habeas corpus proceedings. Like these rules, the recommended rule includes a purpose section defining the rule’s scope, attorney qualifications, alternative qualifications, and guidance around public defender appointments.

The committee proposes rule 4.553 do the following:

- Describe the purpose and scope of the rule (subd. (a));
- Include the following qualifications for appointed counsel (subd. (b)):
 - Active membership in the State Bar of California (par. (1));
 - Experience as one of the following (par. (2)):

¹ All further statutory references are to the Penal Code unless otherwise specified.

² Sen. Bill 133 (Stats. 2023, ch. 34).

³ Effective January 1, 2024, subdivision (f) of section 1473 was re-lettered as (e). (See Sen. Bill 97; Stats. 2023, ch. 381.)

⁴ The California Racial Justice Act of 2020 (Assem. Bill 2542; Stats. 2020, ch. 317) enacted Penal Code section 745.

- Counsel of record for a petitioner in at least two habeas corpus proceedings filed in the Supreme Court, a Court of Appeal, or a superior court (subpar. (A));
- Counsel of record in at least two criminal appeals filed in the Supreme Court, a Court of Appeal, or a federal appellate court (subpar. (B)); or
- Have the experience required to have represented the individual in the underlying class of criminal case (subpar. (C));
- Familiarity with the practices and procedures of California criminal courts (par. (3));
- Demonstrated proficiency in investigation, issue identification, legal research, analysis, writing, and advocacy (par. (4)); and
- Have completed a minimum requirement of 10 hours of training on the Racial Justice Act, including training on implicit bias and on habeas corpus procedure, approved for Minimum Continuing Legal Education credit by the State Bar of California (par. (5));
- Allow the court to appoint an attorney who does not meet all the qualifications if the attorney has completed the 10 hours of training on the California Racial Justice Act of 2020, including training on implicit bias and on habeas corpus procedure, and demonstrates the ability to provide competent representation (subd. (c)); and
- Provide guidance to public defender offices on assignment of qualified attorneys (subd. (d)).

Policy implications

In addition to implementing legislative requirements, this recommendation helps implement Goal I, “Access, Fairness, Diversity, and Inclusion,” of the judicial branch’s strategic plan by assisting courts with appointing qualified counsel to represent petitioners in habeas corpus proceedings with claims under section 745.

Comments

The proposal circulated for comment from December 8, 2023, to January 19, 2024. Six comments were received. The commenters were two divisions in the Superior Court of Orange County, the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee, the First District Appellate Project (joined by the Office of the State Public Defender), the San Francisco Public Defender, and the Orange County Bar Association. Three commenters agreed with the proposal and three agreed if modified.

The committee appreciates the time taken to respond to this proposal. Below is a summary of substantive issues that were raised in the comments. All comments received, and the committee’s responses, are provided in the attached chart of comments at pages 8–16.

Alternative requirements

The First District Appellate Project, joined by the Office of the State Public Defender, and the San Francisco Public Defender were concerned that the alternative requirements subdivision did

not provide sufficient assurance that an attorney would have the skills to litigate a habeas corpus petition with a claim under section 745. The First District Appellate Project recommended dropping the section altogether, stating that the proposed qualifications were already modest and provided courts with sufficient leeway by allowing counsel to have different kinds of relevant experience. Additionally, they expressed concern that the alternative requirements section would authorize the appointment of counsel who did not meet basic criteria. The San Francisco Public Defender separately recommended modeling the appointment procedure after rule 8.300 of the California Rules of Court on appointment of appellate counsel.⁵

In developing the rule, the committee carefully considered a framework establishing sufficient qualifications as well as a measure of flexibility for courts. The committee discussed the comments but concluded that it was important to offer courts a way to use their discretion and judgment to appoint qualified counsel who did not meet all of the qualifications listed in subdivision (b). Further, in developing the alternative requirements section, the committee decided to set a minimum threshold requiring an appointed attorney to meet the statutory requirement under section 1473.1 of a minimum of 10 hours of training in the Racial Justice Act, and then allow courts the discretion to determine counsel's ability to provide competent representation on a case-by-case basis. Subdivision (c)'s requirement that the court find counsel who "demonstrate[] the ability to provide competent representation to the petitioner" ensures that counsel who is not competent is not appointed.

One hour of training on habeas corpus procedure

Section 1473.1 requires appointed counsel to have a minimum of 10 hours of training on the Racial Justice Act. The rule includes training in implicit bias and habeas corpus procedure as part of the 10-hour requirement.⁶ The First District Appellate Project, joined by the Office of the State Public Defender, suggests requiring the training to specifically include at least one hour of training on habeas corpus procedure since most criminal trial practitioners have little to no familiarity with state habeas corpus practice.

The committee agreed with the importance of including training in habeas corpus procedure as part of the training requirements for appointed counsel but thought the proposed language without a specific time requirement was sufficient.

Active membership in State Bar of California

A member of the JRS commented that the requirement that appointed counsel be an active member of the State Bar of California was unnecessary because it could limit pro hac vice appointments of otherwise qualified counsel who are licensed out of state. The committee opted to retain the requirement for active membership in the State Bar of California as it is a stated

⁵ Under rule 8.300, each Court of Appeal adopts procedures for appointing appellate counsel for indigent defendants. Qualified attorneys are placed on a list to receive appointments in appropriate cases, and the court may contract with an administrator to handle appellate court appointments.

⁶ Proposed new rule 4.553(b)(5).

requirement in other rules of court on appointment of counsel in criminal and related matters (see Cal. Rules of Court, rules 4.117(d)(1) and 8.652(c)(1)). Additionally, a court may appoint qualified out-of-state counsel under the procedures in the alternative requirements subdivision.

Demonstrating proficiency

A member of the JRS commented that the provision requiring an attorney to demonstrate proficiency in investigation, issue identification, legal research, analysis, writing, and advocacy⁷ could be burdensome for courts to assess, overbroad, and more applicable to capital appointments than appointments under section 1473(e). Although a few members of the committee agreed that this provision could be burdensome for courts to assess, the majority thought that the requirement was manageable and gave courts the discretion to determine how best to assess an attorney's proficiency.

Alternatives considered

Section 1473.1 requires the Judicial Council to promulgate standards for appointment of counsel in superior court for claims filed under section 1473(e), so the committee did not consider the alternative of not proposing such standards.

Section 1473.1 contains an exception for death penalty cases, but it does not appear to prohibit developing qualifications related to the Racial Justice Act in these types of cases. However, given that qualifications for counsel in death penalty–related habeas corpus proceedings are quite extensive and already difficult to meet, the committee decided not to develop qualifications related to the Racial Justice Act for counsel in death penalty–related habeas corpus proceedings.

Fiscal and Operational Impacts

The fiscal and operational impacts of this proposal are attributable to legislation.

Attachments and Links

1. Cal. Rules of Court, rule 4.553, at pages 6–7
2. Chart of comments, at pages 8–16
3. Link A: Penal Code section 1473.1,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1473.1.&lawCode=PEN

⁷ See proposed new rule 4.553(b)(4).

Rule 4.553 of the California Rules of Court would be adopted, effective September 1, 2024, to read:

Rule 4.553. Qualifications for appointed counsel for claims under section 1473(e) in noncapital case

(a) Purpose

This rule defines the minimum qualifications for appointment of counsel for a petition for writ of habeas corpus claim filed under section 1473(e) in a noncapital case in the superior court. These minimum qualifications are designed to promote competent representation in habeas corpus proceedings related to the California Racial Justice Act of 2020 and to avoid unnecessary delay and expense by assisting the courts in appointing qualified counsel. Nothing in this rule is intended to be used as a standard by which to measure whether a person received effective assistance of counsel. An attorney is not entitled to appointment simply because the attorney meets the minimum requirements.

(b) Qualifications

To be eligible as appointed counsel, an attorney must:

- (1) Be an active member of the State Bar of California.
- (2) Have experience as one of the following:
 - (A) Counsel of record for a petitioner in at least two habeas corpus proceedings filed in the Supreme Court, a Court of Appeal, a superior court, or a federal court.
 - (B) Counsel of record in at least two criminal appeals filed in the Supreme Court, a Court of Appeal, or a federal appellate court.
 - (C) Have the experience required to have represented the individual in the underlying class of criminal case.
- (3) Be familiar with the practices and procedures of California criminal courts.
- (4) Demonstrate proficiency in investigation, issue identification, legal research, analysis, writing, and advocacy.
- (5) Have completed a minimum requirement of 10 hours of training on the California Racial Justice Act of 2020, including training on implicit bias and on habeas corpus procedure, approved for Minimum Continuing Legal Education credit by the State Bar of California.

Rule 4.553 of the California Rules of Court would be adopted, effective September 1, 2024, to read:

1
2 **(c) Alternative requirements**
3

4 The court may appoint an attorney who does not meet all the qualifications stated
5 in (b)(1)–(4) if the attorney meets the qualifications of (b)(5) and demonstrates the
6 ability to provide competent representation to the petitioner. If the court appoints
7 counsel under this subdivision, it should state on the record the basis for finding
8 counsel qualified.
9

10 **(d) Public defender appointments**
11

12 When the court appoints the public defender under section 987.2, the public
13 defender should assign an attorney from that office or agency who meets the
14 qualifications described in (b) or assign an attorney who the public defender
15 determines would qualify under (c).

W24-02**Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(e)**

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	<p>First District Appellate Project by J. Bradley O'Connell, Assistant Director Lauren E. Dodge, Staff Attorney, Deborah E. Rodriguez, Staff Attorney</p> <p><i>Joinder of Office of State Public Defender in these comments.</i></p>		<p>The First District Appellate Project (FDAP) submits these comments on the proposed rule on qualifications of counsel for Racial Justice Act (RJA) habeas corpus petitions pursuant to Invitation to Comment W24-02</p> <p>FDAP is the contract-administrator for indigent defense appeals in the First District pursuant to Rule 8.300(e). FDAP has been actively engaged with implementation of the RJA since its original passage in 2020 and through its subsequent amendments. FDAP recognizes the importance of the RJA and the rules promulgated for its application to vindication of criminal defendants' fundamental rights to assurance that their pretrial proceedings, trials, sentencings, and appeals are not tainted by racial bias. FDAP staff and panel attorneys have litigated RJA issues in pending appeals. Additionally, FDAP has sponsored and otherwise participated in training programs on the RJA for both trial and appellate practitioners. FDAP appreciates this opportunity to comment on the proposed rules setting qualification standards for appointment of counsel for habeas corpus petitions raising RJA claims (Pen. Code § 1473.1).</p> <p>• <u>Rule 4.553(b)(5). Training.</u> The proposed rule should be amended to clarify that <i>at least one hour of the mandatory 10 hours of RJA training must be specifically devoted to habeas corpus procedure.</i></p>	<p>The committee appreciates the comments.</p> <p>As reflected in the proposed rule, the committee agrees that it is important to include habeas corpus procedure as part of the training requirements for appointed counsel. The committees believe the proposed language without a specific time requirement is sufficient.</p>

W24-02**Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(e)**

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	Commenter	Position	Comment	Committee Response
			<p>One of the oddities of California appointed counsel practice is that <i>most criminal trial practitioners have no familiarity with the unique features of state habeas corpus practice</i>. Instead, in California, most habeas petitions filed on behalf of indigent clients are investigated and prepared by appointed <i>appellate</i> counsel, rather than appointed trial defense counsel. It's true that some important aspects of habeas representation, such as factual investigation and conducting evidentiary hearings, call upon trial skills. However, many other crucial aspects of habeas corpus practice, especially at the preliminary and pre-hearing pleading and briefing stages, are unique to habeas corpus. Those habeas pleading rules and other procedures do <i>not</i> closely parallel ordinary criminal pre-trial and trial practice.</p> <p>Unfortunately, in the past, superior courts have rarely appointed counsel on habeas corpus petitions. Consequently, <i>most defense trial attorneys have had no experience or training in habeas corpus practice</i>. That is true of both public defender offices and conflict panels for appointed counsel. In fact, anecdotally, we have already heard some concern from public defender offices regarding the prospect of handling RJA habeas petitions, because habeas practice in general is unfamiliar terrain for most defense trial attorneys.</p> <p>For these reasons, we believe it is vital that Rule 4.553 explicitly provide that <i>at least one hour</i> of</p>	

W24-02**Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(e)**

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	Commenter	Position	Comment	Committee Response
			<p>the mandatory 10 hours of RJA training <i>must be specifically directed to habeas corpus practice</i>. In other words, habeas corpus should not simply be covered passingly during trainings on various kinds of RJA claims. At least one hour should be devoted specifically to habeas corpus procedures in view of the general lack of familiarity with habeas practice among most trial practitioners.</p> <p>• <u>Rule 4.553(c). Alternative requirements.</u> Proposed subdivision (c) broadly provides that a “court may appoint an attorney who does not meet all of the requirements stated in (b)(1)-(4)” if the attorney has completed the requisite 10 hours of RJA training (per (b)(5)) “and demonstrates the ability to provide competent representation to the petitioner.” <i>We recommend that the Judicial Council drop subdivision (c) altogether</i> on the ground that it is too vaguely worded (“ability to provide competent representation”) and does not provide sufficient assurance that the attorney has the requisite experience and skills to litigate an RJA habeas petition.</p> <p>The requirements of (b)(1)-(4) are modest and already afford courts with sufficient leeway to appoint an attorney who may not otherwise satisfy the more specific criteria of the rule, such as having previously handled two or more appeals or habeas corpus petitions. Proposed subdivision (b)(2)(C) provides courts with that flexibility by authorizing appointment of an</p>	<p>The committee believes this subdivision is important to ensure that courts have the flexibility to use their discretion and judgment to appoint counsel who are qualified but do not satisfy all of the requirements of the rule. Additionally, courts must make specific findings on the record about appointments under this subdivision.</p>

W24-02**Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(e)**

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	Commenter	Position	Comment	Committee Response
			<p>attorney with “the experience required to have represented the individual in the underlying class of criminal case.” Through that provision, the proposed rule assures that experienced trial attorneys, as well as appellate and habeas practitioners, will qualify for appointments on RJA habeas petitions.</p> <p>Subdivision (c), however, goes further and would authorize the appointment of an attorney without experience in <i>any</i> of the forms of criminal practice listed in (b)(2) (appellate, habeas, or trial). Still more troubling, (c) would allow appointment of an attorney who does not satisfy the even more basic criteria of (b)(1) (California Bar membership), (b)(3) (familiarity with California criminal practice and procedures) and (b)(4) (general legal practice skills). We can hypothesize a situation in which the circumstances of a case might support the appointment of an out-of-state attorney with expertise uniquely suited to the challenges of that case (thus allowing an exemption from (b)(1) in such circumstances). However, it is difficult to conceive of any case in which it would be appropriate to appoint an attorney who does <i>not</i> “demonstrate proficiency in investigation, issue identification, legal research, analysis, writing, and advocacy,” as (b)(4) would otherwise require.</p> <p>We understand the desirability of allowing courts some discretion to appoint an attorney who may not necessarily “check all the boxes”</p>	<p>In developing the alternative requirements section, the committee decided to set a minimum threshold requiring an appointed attorney to meet the statutory requirement under section 1473.1 of a minimum of 10 hours of training in the Racial Justice Act, and then allow courts the discretion to determine counsel’s ability to provide competent representation on a case-by-case basis. Subdivision (c)’s requirement that the court find counsel “demonstrate[] the ability to provide competent representation to the petitioner” ensures that counsel who is not competent is not appointed.</p>

W24-02

Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(e)

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	Commenter	Position	Comment	Committee Response
			<p>but who plainly has the necessary experience and demonstrated legal skills to represent the petitioner zealously and effectively in an RJA habeas proceeding. But we believe that proposed subdivision (c) goes too far by allowing appointment of an attorney who lacks trial, appellate, <i>or</i> habeas experience (as otherwise required by (b)(2)), who is not familiar with California criminal procedure ((b)(3)), or, most disturbingly, who has not “demonstrate[d] proficiency” in such crucial skills as issue identification, analysis, writing and advocacy ((b)(4)).</p> <p>We commend the substantial work the advisory committee has devoted to crafting this proposed rule on qualifications for appointed counsel on RJA habeas petitions. We greatly appreciate the opportunity to comment on the proposed rule based on the First District Appellate Project’s familiarity with the purposes of the RJA and with California habeas corpus practice.</p> <p><u>Joinder of Office of State Public Defender in these comments.</u> The Office of the State Public Defender (OSPD) fully joins in FDAP’s comments on proposed Rule 4.553 (W24-02). OSPD has authorized FDAP to inform the Judicial Council of OSPD’s concurrence and joinder in FDAP’s comment letter on this proposal.</p>	

W24-02**Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(e)**

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	Commenter	Position	Comment	Committee Response
2.	Office of the State Public Defender by Erik Levin, Supervising Deputy State Public Defender	AM	*The Office of the State Public Defender Office fully joins in the First District Appellate Project's comment letter.	The committee appreciates the comments.
3.	Orange County Bar Association by Christina Zabat-Fran, President	A	The proposal appropriately addresses the stated purpose.	The committee appreciates the comments.
4.	San Francisco Public Defender by Danielle Harris, Managing Attorney	AM	<p>The proposal allows just 10 hours of training to suffice for RJA habeas appointment even if counsel has no habeas or appellate experience and is not qualified to represent the person at the trial level on the same case. This does not reasonably assure competent counsel and thus risks running afoul of Sixth Amendment guarantees.</p> <p>A better solution where the other listed criteria are not met would be akin to the way appellate counsel is appointed. Rule 8.300 states that counsel must be appointed based on criteria approved by the Judicial Council and the task of administering a panel of attorneys for appointment has been delegated to the Court of Appeal's Appellate Project directors. The project directors evaluate the qualifications of attorneys who request appointment to cases there and a similar process should be instituted here when only the 10-hour requirement is met.</p>	<p>The committee appreciates the comments.</p> <p>The committee believes subdivision (c) is important to ensure that courts have the discretion to appoint qualified counsel who do not satisfy all of the requirements of the rule. Additionally, courts must make specific findings on the record about appointments under this subdivision.</p> <p>Courts may work with their justice system partners to implement the appointment process as appropriate.</p>
5.	Superior Court of Orange County by Iyana Doherty, Courtroom Operations Supervisor	A	<p><i>Does the proposal appropriately address the stated purpose?</i></p> <p>Yes</p>	The committee appreciates the comments.

W24-02**Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(e)**

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	Commenter	Position	Comment	Committee Response
			<p><i>Would the proposal provide cost savings? If so, please quantify.</i> No.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i> We currently have two attorneys on our Writ of Habeas Corpus Conflict Panel. The court will have to confirm if the attorneys have the training requirements required and if not, provide them with time to complete the training. Contracts would have to be amended to include training requirements.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Unsure. Attorneys would need to make sure they have taken the training provided by the State Bar and I don't know if 3 months is enough time for them to get done.</p> <p><i>How well would this proposal work in courts of different sizes?</i> Yes, this proposal would not differ for courts of different sizes.</p>	
6.	Superior Court of Orange County, Juvenile Division		<p><i>Does the proposal appropriately address the stated purpose?</i></p>	The committee appreciates the comments.

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	Commenter	Position	Comment	Committee Response
	by Katie Tobias, Operations Analyst		<p>Yes, the proposal appropriately addresses the stated purpose.</p> <p><i>Would the proposal provide cost savings? If so, please quantify.</i> The proposal does not appear to provide cost savings.</p> <p><i>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</i> Provide an information update to Case Processing Staff, Courtroom Staff, and Judicial Officers. The following will need to occur for implementation: update procedures, make modifications in the case management systems, and train staff.</p> <p><i>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i> Yes, three months will be sufficient time for implementation.</p> <p><i>How well would this proposal work in courts of different sizes?</i> Our court is a large court, and this could work for Orange County.</p>	
7.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court	A	JRS Position: Agree with proposed changes.	The committee appreciates the comments.

W24-02**Criminal Procedure: Appointment of Counsel for Claims Filed Under Penal Code Section 1473(e)**

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	Commenter	Position	Comment	Committee Response
	<p>Executives Advisory Committee (CEAC) by TCPJAC/CEAC Joint Rules Subcommittee (JRS)</p>		<p>The JRS notes that the proposal is required to conform to a change of law.</p> <p>The JRS submits the following comments:</p> <p>Proposed Rule 4.553(b) does promulgate necessary standards. Minor suggestions relate to qualifications: (1) as being unnecessary/assumed and would limit rare instance of not permitting pro hac vice appointment (maybe petitioner is out of state); and (4) seems unnecessary in light of section (c). Section (b)(4) might be burdensome to have trial courts figure out how an attorney would demonstrate proficiency in investigation, issue identification, etc. This appears to come from capital case appointments and appears overbroad.</p>	<p>The committee opts to retain the qualifications in rule 4.553(b)(1) requiring active membership in the State Bar of California as it is a stated requirement in other rules of court on appointment of counsel in criminal and related matters (see Cal. Rules of Court, rule 4.117(d)(1), and rule 8.652(c)(1)). Additionally, the court may appoint out-of-state counsel under the procedures in the alternative requirements subdivision.</p> <p>The committee opts to retain the qualifications in rule 4.553(b)(4) requiring the court to appoint counsel who demonstrates proficiency in investigation, issue identification, legal research, analysis, writing, and advocacy. Though a few members of the committee agreed that this could be burdensome for courts to assess, the majority thought that the requirement was manageable and allows courts the discretion to determine how best to assess an attorney's proficiency.</p>