

# Courts Focus on Capital Habeas Management

Capital habeas corpus petitions, in which a death penalty defendant claims a violation of constitutional rights, are extremely complex and often quite costly to adjudicate. Through its Capital Case Committee, the Ninth Circuit seeks to better manage capital habeas corpus cases, thereby containing costs without compromising legal representation.

Capital habeas corpus case budgets are submitted by Criminal Justice Act panel attorneys to the presiding judges of the district courts in which the cases are heard. The budgets are reviewed and approved by the Judicial Council of the Ninth Circuit based on recommendations from the Capital Case Committee. The previous review and approval process often took several months to complete. If the Capital Case Committee or the Judicial Council recommended subsequent budget changes, additional time was needed before final approval.

The Capital Case Committee has sought to speed up the process by dividing its workload among three subcommittees. Each subcommittee reviews one-third of the budgets submitted and makes recommendations. Cases are immediately assigned as they are received, rather than being held for a quarterly committee meeting. Subcommittees are expected to act within two weeks of receiving the budget. If after discussing any issues, subcommittee members are unable to reach a consensus, the budget is held over and discussed at the next full committee meeting.

While only the assigned subcommittee members are required to review budget materials, the materials are available to all committee members, who also can and sometimes do offer additional input.

The committee agreed to evaluate the new process after one year.

In 2008, the committee also evaluated whether there was a need to increase the maximum hourly rates charged by investigators and paralegals involved in capital habeas cases.

The committee recommended increasing the maximum hourly rates that can be charged by investigators and paralegals to \$75 per hour from \$55-\$65 per hour, and paralegal rates to \$45 per hour from \$35 per hour, respectively. The higher rates were approved in October by the Judicial Council of the Ninth Circuit. It was the first increase in rates for investigators and paralegals since 2002.



*Seated from left to right: Magistrate Judge Craig M. Kellison (CAE), District Judge Mary H. Murguia (AZ), District Judge David O. Carter, Chair (CAC), District Judge Ronald M. Whyte (CAN), District Judge Barry Ted Moskowitz (CAS). Standing from left to right: Margaret Epler, law clerk (COA), Andy Parnes, CJA attorney (ID), Carla Ortega, staff attorney (CAC), Margaret Fainer-Towne, staff attorney (CAE), Sandy K. Andrews, policy and research analyst, Nancy Rutledge, CJA case-budgeting attorney, Kristine Fox, staff attorney (AZ), Dr. Robert Rucker, assistant circuit executive for policy and research, Jeane DeKolver, CJA supervising attorney (CAN). Not pictured: District Judge Philip M. Pro (NV), Senior District Judge Wm. Fremming Nielsen (WAE) and Steven T. Wax, federal public defender (OR).*

The Capital Case Committee is chaired by District Judge David O. Carter of the Central District of California. The committee meets four times a year in the different judicial districts of the Ninth Circuit having active capital cases. Judges and court staff working on those cases in the host district are invited to attend all or parts of the meetings.

Capital Case Committee members also attend the Ninth Circuit's annual conference for death penalty law staff attorneys and case management workshops for staff attorneys, and have provided training for Article III judges. ■