



PROMOTING JUSTICE SINCE 1877

**RULES AND REGULATIONS**  
**OF THE**  
**ALAMEDA COUNTY BAR ASSOCIATION**  
**CRIMINAL COURT APPOINTED ATTORNEYS PROGRAM**  
**(Effective October 2, 2018)**

**A. Preamble**

These Rules and Regulations of the Alameda County Bar Association’s Criminal Court Appointed Attorneys Program (“Program” or “CAAP”) shall hereinafter be collectively referred to as the “Rules and Regulations.”

The purpose of the Program is to:

- (1) Establish and maintain a service to assist the Superior Court (“Court”) of California, County of Alameda (“County”) in appointing qualified private counsel to represent eligible indigents accused of crime, and others who may be entitled to court appointed counsel, pursuant to the Constitution of the United States or the laws of the State of California;
- (2) Assist the County in providing eligible indigents with court appointed counsel in an effective and efficient manner;
- (3) Further the general purpose of the Alameda County Bar Association (“ACBA”) which is to promote excellence in the legal profession and facilitate equal access to justice;
- (4) Provide indigent criminal defendants access to qualified, committed, and professional private counsel; and
- (5) Promote high standards of professionalism, competence, diligence, and integrity among members of the County’s criminal defense bar.

**B. Administration and Operation of the Program**

- (1) The Program shall be operated under the auspices of the ACBA. The responsibility for the administration of the Program shall vest in the ACBA Board of Directors (“Board”).
- (2) The Board shall create a committee, known as the CAAP Advisory Committee (“Committee”). The Committee shall consist of at least five (5) and not more than eleven (11) members. Each Committee

member shall be appointed for a two-year term, except the Chair and Vice-Chair of the Committee, who shall be appointed for one-year terms. A maximum of six total years may be served by a Committee member, except a member may serve one, seventh year term as either Chair or Vice-Chair. Except for the Chair and Vice-Chair, no other Committee member shall serve more than three consecutive terms. The Committee Chair, Vice-Chair and other Committee members shall be nominated for the following year by the ACBA President-Elect no later than the preceding December, subject to approval and appointment by the Board.

(3) A majority of the Committee members shall be experienced criminal defense attorneys, as determined in the Board's discretion. The Committee shall be composed of attorneys who work in all classes of criminal defense practice. At least fifty percent of the Committee shall be non-Program panel members.

(4) The Committee shall hold regular meetings, and a simple majority of Committee members may call special meetings as may be necessary from time to time. Committee meetings shall be governed by Robert's Rules of Order. A simple majority of Committee members shall constitute a quorum. Meetings may be held telephonically or electronically, at the discretion of the Committee Chair. Attendance at Committee meetings is limited to current Committee members, the Program Director ("Director"), the ACBA Chief Executive, and the ACBA President (and/or her/his designee). All proceedings of the Committee shall be confidential. The Committee may elect to invite others to attend a portion of a Committee meeting, at the Committee's discretion.

(5) Committee members (including officers) serve at the pleasure of the Board and may be removed by the Board at any time.

(6) The Chief Executive Officer of the ACBA shall hire a Director whose duty is to manage the Program in conformity with these Rules and Regulations, applicable statutes, and the ACBA's contract with the County concerning the Program. Under the supervision of the ACBA Chief Executive Officer, the Director shall be responsible for the Program's daily operations, including overseeing appointment procedures, maintaining accurate and current records, monitoring and forecasting the caseload, managing the budget, and conforming the Program to any changes in the law or the ACBA's contract with the County concerning the Program. The Director shall, in consultation with the Committee, develop and maintain an ongoing training program in trial advocacy and substantive criminal law, to promote and enhance the competence, integrity, diligence, and professionalism of Program panel members. The Director has sole discretion to approve or deny applications of attorneys applying to be Program panel members for possible assignment of Class 4 and 5 cases (misdemeanors), including as set forth in Section D herein. The Committee has sole discretion to approve or deny applications of attorneys applying to be Program panel members for all other classes of cases, including as set forth in Section D herein. Both the Director and the Committee shall monitor for quality assurance and evaluation of the Program and Program panel members. The Director, Committee Chair, and Vice-Chair shall serve as contacts on criminal matters with the Court. The Director shall respond to inquiries from the Court, and advise the Committee of such inquiries and each response to the same as the Director deems necessary.

(7) The Committee and Director shall administer and apply these Rules and Regulations in a fair and impartial manner, update the Program Fee Schedule when necessary and appropriate, and seek to ensure that high standards of competence, integrity, and diligence are demonstrated by all panel members in the discharge of their professional duties so as effectively and adequately to assist their indigent clients, safeguard the rights of the Program's represented indigents, and uphold the reputation and standing of the Program.

(8) The Board President shall appoint the individuals responsible for negotiating the ACBA's contract with the County concerning the Program. The negotiating team shall include a representative from the Committee chosen by the Committee.

### **C. General Membership Terms and Eligibility**

(1) The Program shall be operated as a panel consisting of lawyers who are eligible for membership in various classes of cases as set forth in the Program Fee Schedule, and who have been approved by the Director and Committee for Program panel membership.

(2) Program panel members are independent contractors for the ACBA; they are not employees of either the ACBA or the Program. Program panel members are not covered by any employee benefit plans provided to or by the ACBA or the Program. Program panel members are liable for the acts and omissions of themselves and their own employees, subcontractors, and agents. Nothing in these Rules and Regulations, or in any other documents, communications, contracts, agreements, or otherwise between panel members, the ACBA, and/or the Program shall be construed as creating an employment or agency relationship between Program panel members, on the one hand, and either the ACBA or the Program on the other hand. Each Program panel member shall determine the methods, details, and means of performing his or her Program-related services, including, without limitation, exercising full control over the employment, direction, compensation, and discharge of all of his or her subcontractors, agents, employees, or other persons assisting in the performance of that Program panel member's services. Each Program panel member shall control the details of, and is solely responsible for, his or her acts, omissions, decisions, and undertakings incident to and/or in furtherance of the representation of any client whose representation arises under the Program. Each Program panel member shall be solely responsible for all matters relating to the payment of his or her own employees, including but not limited to compliance with Medicare, social security, income tax withholding, unemployment, and workers' compensation laws and regulations governing such matters. Neither the Program panel members, on the one hand, nor the ACBA or the Program on the other, have any authority to enter into any contract or otherwise incur any liability in the name of, or on behalf of, one another.

(3) Each Program panel member must be an active member of the State Bar of California ("State Bar") in good standing. A Program panel member must notify the ACBA, in writing, within ten (10) days of receipt of notification of any discipline imposed on that Program panel member by the State Bar. Upon such written notice, the Committee shall begin the evaluation procedures provided for in these Rules and Regulations.

(4) Each Program panel member must maintain her or his principal office in Alameda County, with that address as the address of record with the State Bar. Each Program panel member shall also have the majority of her or his practice in Alameda County. This requirement shall be in force unless a shortage of qualified attorneys in particular classes or with particular specialized skills makes a waiver of this rule necessary. The determination of whether such a waiver, allowing attorneys from other counties to apply for panel membership, is necessary shall be made by the Committee, at its sole discretion, on a case-by-case basis.

(5) Each Program panel member must declare to the Committee in writing in a form to be published by the Committee ("Declaration of Eligibility"), to:

(a) Abide by these Rules and Regulations (as amended from time to time at the Committee's sole discretion);

(b) Accept and follow the Program Fee Schedule (as updated from time to time at the Committee's sole discretion);

- (c) Adhere to the State Bar Act, the California Rules of Professional Conduct, and all rules of professional conduct promulgated by the California State Bar;
- (d) Provide quality representation to all of his or her clients, including those assigned to the Program panel members by or through the Program;
- (e) Provide services in a competent, effective, and diligent manner; and,
- (f) Participate regularly in continuing legal education activities specific to criminal law and the representation of indigent clients, and demonstrate adequate skills, knowledge, and comprehension of the California criminal justice system, the specific statutes, rules of court, and case law relevant to criminal proceedings.

(6) To ensure communication with their clients, other members of the panel, the Program, the ACBA, and the community at large, each member is required to have:

- (a) An office telephone number where she or he can be reached during normal business hours and is available to clients, the Director, and/or the Committee;
- b) A mailing address;
- (c) A working e-mail address; and,
- (d) A computer with regular and continuous Internet access during normal business hours.

(7) Each member of the panel shall agree to indemnify and hold harmless:

- (a) The ACBA, its officers, directors, members, and employees;
- (b) The Committee, its officers, and members; and,
- (c) The County, its Board of Supervisors, employees and agents

from and against any and all claims, causes of action, demands, actions, liabilities, damages, judgments, awards, settlements, insurance deductibles, losses, costs, or expenses (including attorneys' fees) relating to and/or arising from that Program panel member's participation in the Program, or lack thereof.

(8) Each Program panel member shall pay an annual membership fee as set by the Board in its sole discretion. The annual Program membership fee may change from year to year.

(9) Each year, every Program panel member seeking to continue Program membership and each new applicant for Program membership shall submit an application for Program membership and a Declaration of Eligibility, on forms to be published by the Committee. The selection of panel members each year shall be independent of the selection of panel members from prior years, and shall be in the sole discretion of the Committee and the Director.

## D. Application, Class Certification and Recertification

### (1) Initial Application for Program Panel Membership.

New applicants for Program panel membership must submit a written application on a form to be published by the Committee ("Application"). The Application will, at a minimum, include:

- (a) Detailed information supporting the applicant's eligibility for membership in the requested class(es) of appointments;
- (b) A Declaration of Eligibility as outlined above and agreement to abide by these Rules and Regulations (as amended from time to time at the Committee's discretion) and such other and further rules and regulations as may be adopted for the Program;
- (c) A general waiver and release of any and all claims in favor of:
  - (i) the ACBA and its officers, directors, managing agents, members, and employees;
  - (ii) the Committee, its officers, and members; and,
  - (iii) the County, its Board of Supervisors, employees, and agentsas to any and all claims, causes of action, demands, actions, liabilities, damages, judgments, awards, settlements, insurance deductibles, losses, costs, or expenses (including attorneys' fees) relating to and/or arising from that panel member's participation in the Program, or lack thereof;
- (d) An explicit acknowledgment that:
  - (i) No attorney has the right to be a Program panel member;
  - (ii) There is no guarantee that application for Program panel membership will be granted;
  - (iii) If admitted to the Program panel, the Program panel member has no guarantee that the Program panel member will be assigned any cases at all through the Program or otherwise;
  - (iv) A Program panel member may be assigned greater or fewer cases than any other Program panel member;
  - (v) Case assignment is at the sole discretion of the Director, taking into consideration the needs of Program clients, the rotation of Program panel members, the availability and experience of the Program panel member, quality assurance review, the needs of the Program, and each Program panel member's history with the State Bar, the bench, members of the bar, clients, and the Program; and
  - (vi) If admitted to the Program, admission is in no way a promise, guarantee, or commitment to be admitted, readmitted, or renewed for Program panel membership in any other year.
- (e) An agreement to complete at least six (6) hours of Mandatory Continuing Legal Education ("MCLE") approved activities in criminal law each year. Only three (3) of the required six (6)

hours may be self-study.

The Director and/or the Committee may conduct further inquiry into the application and investigate the applicant as they deem appropriate and necessary in their sole discretion. The Director has sole discretion to approve or decline applications for Program panel membership for Class 4 and 5 cases; the Committee has the sole discretion to approve or decline applications for Program panel membership for all other classes of cases.

(2) Change of Class Certification for Existing Panel Members.

(a) Current Program panel members who wish to become certified for a higher class of cases must submit a written application on a form to be published by the Committee, including detailed information supporting the applicant's eligibility for membership in the requested class(es) of appointments.

(b) The Director and/or the Committee may conduct further inquiry into the application and investigate the applicant as they deem appropriate and necessary in their sole discretion.

(c) The Director has sole discretion to approve or decline applications for an increase in class certification to Class 4.

(d) The Committee has the sole discretion to approve or decline applications for class certification for all other classes of cases.

(e) Applicants for certification for Class 1 or 2 cases may be certified contingent on the applicant working with a mentor (compensated through the Program) for a specified period of time or number of cases.

(3) Annual Reapplication Process.

(a) Each year, each current Program panel member who wishes to be on the panel for the following year must submit a written application to have her or his membership renewed, on a form provided to be published by the Committee, including items D(1)(b) through (e) above, and certification that they have completed the MCLE requirement set forth in D(1)(e) above.

(b) Selection of Program panel members each year shall be in the sole discretion of the Committee and the Director.

(c) Selection to be a panel member in a preceding year is in no way a promise, guarantee, commitment, to be readmitted or renewed for panel membership in any following year.

(4) Application Fees.

(a) Each new application for Program panel membership, and each application for renewed Program panel membership, must be accompanied by payment of the annual membership fee.

(b) If an application for new or renewed Program panel membership is declined, the Program shall return to the applicant the monies she or he paid for the Program panel membership for the year that was the subject of her or his declined application.

## **E. Quality Assurance**

In furtherance of the Program's goals of promoting high standards of professionalism, competence, diligence, and integrity, the Director and the Committee shall implement the following provisions:

### **(1) Periodic Evaluation and Review.**

- (a) Each year, at the discretion of the Committee and/or the Director, the Program will conduct a confidential peer and judicial review process of all or a portion of the Program panel members. Said review may be conducted at any time, and with or without prior notification to Program panel members or new applicants that said review will occur.
- (b) At the request of the Committee and/or the Director, Program panel members and new applicants agree to furnish any requested information for purposes of evaluation. Acceptance of Program panel membership constitutes consent to the Program obtaining confidential information from other attorneys, including co-counsel, opposing counsel, public defenders, district attorneys, private attorneys, and judicial officers, acknowledging that the source of confidential information obtained shall not be disclosed.
- (c) Information collected in the course of the evaluation of panel attorneys will be used in determining membership acceptance and renewal. Panel attorneys being evaluated will be provided with a summary of the data collected, and offered an opportunity to comment in writing on that data within seven (7) days of receipt of said summary.
- (d) The Committee shall use the data and comments collected during this process to determine Program panel admission and membership for the following year, as well as to evaluate the overall performance of the Program. The Committee's decision is at its sole discretion.
- (e) Applicants selected by the Committee for Program membership shall be provided with a letter notifying them of that decision.
- (f) Applicants not invited by the Committee for Program membership or who are invited to a lower class than they had been in the preceding year shall be provided with a letter or email setting forth the Committee's decision. Such applicants may, within fourteen (14) days of the date of said letter or email, request a hearing before the Committee to present the Program panel member's position and response. At such a hearing, the Committee's stated decision will be presumed correct and the applicant bears the burden of offering new information to persuade the Committee to alter its decision. The Committee reserves the right to reconsider, alter, change or respond in any way whatsoever to the Program panel member at or following such a hearing, but the Committee is in no way under any obligation to do so. Following such a hearing, the Committee shall issue a written report to the Program panel member providing the Program panel member with the Committee's final decision.
- (g) If a hearing is not timely requested, the Committee's decision becomes final fourteen (14) days after the date of the letter or email. If a hearing is requested, and the Committee determines that its prior decision stands, that decision shall be final on the date of the report conveying that decision to the Program panel member.
- (h) In the event that a Program panel member is not selected by the Committee for Program membership, the Program panel member shall continue to represent clients on cases where the Program panel member has already been appointed, until the conclusion of those cases. The

Committee reserves the right, in its sole discretion, to raise the question of the Panel member's continued representation in those matters with the relevant bench officer in light of the information learned in the evaluation.

(2) Investigation of Allegations of Incompetence or Other Issues.

(a) Any Program panel member whose actions, omissions, deficiencies, or conduct has been observed by the Committee, Director, another panel member, other counsel, or judicial officer not to comply with these Rules and Regulations, a Program panel member's fiduciary duties to the Program's eligible indigent clients, a Program panel member's professional obligations and responsibilities, or any other activities that fail to comply with what are considered to be best practices, may be required to submit a written explanation, and/or discuss the matter with the Committee and/or the Director at a time and place that the Committee and/or Director deems appropriate. To support said explanation, and at the request of the Committee and/or the Director, a Program panel member may be required to produce case files (including any and all electronic and paper documents).

(b) Actions or omissions that may trigger such an evaluation may include, but are not limited to:

(i) A Program panel member's failure or refusal to perform their duties in accordance with these Rules and Regulations;

(ii) A Program panel member's failure or refusal to perform their duties in accordance with their professional obligations as required by California law and the California Rules of Professional Conduct;

(iii) Any disciplinary proceedings relating to a panel member reported to or conducted by the California State Bar;

(iv) A Program panel member has been convicted of a crime; and

(v) A Program panel member's failure or refusal to participate in the review process outlined herein.

(c) All Program panel members shall cooperate with this explanation and discussion protocol at the Committee's and/or the Director's request(s).

(d) The Committee and/or the Director may conduct further investigation and evaluation of the Program panel member's competence, diligence, and integrity.

(e) As a result of the Committee's and/or Director's evaluation, the Committee may take certain actions, including but not limited to one or more of the following:

(i) Imposing a requirement of remedial training;

(ii) Mandating mentoring or oversight;

(iii) Changing the Program panel member's certification to a lower class of cases;

(iv) Suspension or probationary period from the Program panel for any period; and/or,

(v) Removal from the Program panel.



(f) Following such an evaluation, the Committee shall report to a panel member its findings and the actions to be taken as a result of the evaluation. The report shall indicate the deficiency constituting the cause for the action taken. The report may also seek specific performance by the Program panel member of certain obligations arising from membership in the Program and under these Rules and regulations.

(g) A Program panel member who is subject to such an evaluation shall have seven (7) days within which to respond to the Committee's findings and actions in writing. Failure to respond to the Committee in writing within this period shall be deemed to be an acceptance of the Committee's findings and actions.

(h) In the event a Program panel member timely submits such a written response to the Committee, the Program panel member may request a hearing before the Committee to present the Program panel member's position and response. The Committee reserves the right to reconsider, alter, change, or respond in any way whatsoever to the Program panel member at or following such a hearing, but the Committee is in no way under any obligation to do so.

(i) Following such a hearing, the Committee shall issue a written report to the Program panel member providing its final actions.

(j) Pending the final outcome of this evaluation, the Committee may instruct the Director to stop giving new referrals to the Program panel member as it deems appropriate. The Committee reserves the right, in its sole discretion, to raise the question of continued representation on the Program panel member's current cases with the relevant bench officer in light of the nature of the issue and information received.

The actions of the Committee set forth above in implementing and executing these or any other disciplinary procedures lies in the sole discretion of the Committee. The Committee is not required to implement a progressive discipline approach and may instead take whatever disciplinary action it deems appropriate against a Program panel member who is found by the Committee in its sole discretion to have failed to comply with what is considered best practices in the profession, under these Rules and Regulations, and/or applicable law.

## **F. Classes of Cases**

(1) To help ensure that only qualified Program panel members are assigned to cases, the Committee shall establish a class schedule in which cases shall be categorized by the level of experience and competence needed by the attorney to be assigned, as set forth in the Program Fee Schedule and based on the facts, legal issues, and other matters concerning a specific assignment.

(2) The Committee shall assign, in its sole discretion, each Program panel member to one or more classes based on the Program panel member's experience and ability to provide effective representation. In evaluating the Program panel member's experience and effectiveness, the Committee may rely on any source of information that provides guidance, including the confidential opinions of the legal community, including co-counsel, opposing counsel, public defenders, district attorneys, private attorneys, and judicial officers.

(3) Except in extraordinary circumstances, including but not limited to where the Director determines that the client would benefit from continuing to be represented by an attorney already representing a client, no Program panel member shall be assigned to a case that exceeds the Program panel member's class level.

(4) To help achieve, in the Committee's sole discretion, an equitable distribution of cases and/or quality and effective representation of defendants, the Committee may assign Program panel members to multiple classes for which she or he qualifies. Although it will endeavor to achieve an equal and even distribution of cases, the Committee is under no obligation to provide Program panel members with a certain number of case assignments at any given time; the number of cases assigned to a Program panel member is at the Committee's sole discretion. An attorney is not allowed to maintain concurrent membership on both the adult felony and adult misdemeanor panels.

(5) As necessary and in its discretion, the Committee shall make additional rules to assure these goals are met.

### **G. Assignment of Cases to Panel Members**

(1) The Program panel shall be arranged in accordance with each member's class eligibility. If a Program panel member has been appointed to represent a defendant in the County, said Program panel member shall generally be appointed to represent the same defendant in any criminal or related Welfare and Institutions Code case which may arise in any Court while the original charge is pending and judgment has not been imposed, provided said Program panel member meets the necessary class requirements.

(2) Where a Program panel member determines that a case exceeds the Program panel member's assigned class classification(s), the Program panel member must inform the Program immediately. If, after the Program panel member has accepted a case for which he or she is eligible, the charging document is amended and causes the case to exceed the Program panel member's assigned class classification(s), the Program panel member must inform the Program immediately. The Program, at the discretion of the Committee and/or Director, shall reassign the case to another Program panel member absent extraordinary circumstances. The Program may impose penalties for failing to abide by this rule, including nonpayment of attorneys' fees and any other penalties and procedures set forth under these Rules and Regulations.

(3) Referrals shall be made by the Program from each class of Program panel members. To the extent consistent with the Committee's judgment and/or the Director as to the needs of the Program and the member's qualifications, referrals may be made on a rotating basis.

(4) A Program panel member may not accept appointment in a new case if the Program panel member has professional, personal, or calendar commitments that adversely affect the Program panel member's ability to represent the client, including but not limited to conflicts of interest. Where it is the client's wish or in the client's best interest to proceed on a no-time-waiver basis, a Program panel member may not accept the case if the Program panel member will not be available to represent the client.

(5) A Program panel member who withdraws from a case in violation of these Rules and Regulations may not be paid by the Program and, if already paid by the Program, the Program panel member may be required to reimburse said payment or a portion thereof to the Program at the Committee's sole discretion. If a Program panel member withdraws from a case, the Program panel member must submit a written explanation to the Committee and Director setting forth good cause for the withdrawal. Program panel members who are ill and cannot physically handle a case or cases may, with permission of the Director, withdraw from the case(s) pursuant to Section H(2)-(3), below.

(6) Except in extraordinary circumstances to be determined according to the Committee's sole discretion, a Program panel member who accepts appointment in a case and thereafter withdraws from such a case because of previous commitments will not be paid for the case.

(7) Except in extraordinary circumstances to be determined according to the Committee's sole discretion, a Program panel member who withdraws from a case due to a conflict will not be paid for services performed after the date the Program panel member reasonably should have discovered the conflict.

#### **H. Tardiness and Short- and Long-Term Inability to Represent Assigned Program Panel Clients**

(1) It is a Program panel member's responsibility to timely inform the Court, co-counsel (if any), and any other involved parties, if she or he will be late for any court appearance.

(2) In the event of a short-term emergency:

(a) It shall be the responsibility of the appointed Program panel member who is not able to appear to arrange for an attorney substitute. Any attorney substitute shall also be a current member of the Program in good standing under these Rules and Regulations. Any attorney substitute shall also be certified as being of an equal or higher class designation as that of the substituting Program panel member.

(b) In the event a Program panel member is not able to arrange for a substitute, the Program panel member shall notify the Court sufficiently in advance of the scheduled appearance to reschedule the appearance and shall, as soon as is practicable, notify the Program of the situation. If, after notifying the Court, it is still necessary to arrange for a substitute attorney and if the Program provides a substitute, the Program will deduct from the non-appearing Program panel member's compensation under the Program Fee Schedule in an amount equal to the cost of the substitute attorney.

c) A Program panel member shall keep the Director informed of any material changes to the information required under this subsection.

(3) In the event of a long-term emergency that will affect the appointed Program panel member's ability to continue to handle the case effectively and timely, the appointed Program panel member must notify the Program as soon as practicable after learning of the emergency, and the Program will appoint a new Program panel member.

#### **I. Resignation from Panel**

(1) A Program panel member may withdraw from the Program at any time upon written notice to the Director.

(2) Upon such withdrawal, no portion of the membership fee paid to the Program will be returned, nor will any unpaid fee owed to the Program by the resigning Program panel member be discharged.

(3) The resigning Program panel member will be expected, whenever possible, to complete the case assignments to which the resigning Program panel member has been appointed.

#### **J. Rules in Special Circumstances Cases**

In cases involving the possible imposition of the death penalty, the following special rules shall apply:

(1) In order to promote professional growth, and when second-chair counsel is approved, the Program encourages Program panel members appointed as lead counsel to request qualified Class 1 Program

panel members who want to qualify for Special Circumstances cases as second-chair counsel. The Program will attempt to ensure that a Program panel member who is newly qualified for Special Circumstance cases be appointed as second-chair counsel in the next Special Circumstance case where a Program panel member is appointed by the Court, unless that Program panel member is serving as second-chair counsel in another Special Circumstance case.

(2) A Program panel member appointed as lead or second-chair counsel in two or more pending capital cases shall not be selected as lead or second-chair counsel in an additional capital case without demonstration of extraordinary circumstances to and the approval of the Committee.

(3) Selection as lead or second-chair counsel shall result in placement at the bottom of the Class 1 rotation.

(4) The Program panel member acting as lead attorney must notify the Director and must receive prior approval of the second chair attorney selection before the selection is effective. No second chair shall be appointed without prior written approval of the Committee. The Director shall provide written notice of the Committee's action to the lead Program panel member. If the lead Program panel member fails to obtain prior approval, the Program will impose appropriate penalties pursuant to these Rules and Regulations and as the Committee deems necessary in its sole discretion.

#### **K. Non-Eligibility Following Removal From Other ACBA Programs**

(1) A Program panel member who has been removed for disciplinary reasons from any other attorney panel of the ACBA, shall be automatically removed from and ineligible to participate in, or be accepted to, any other ACBA attorney panel program, including the Program. The duration of such ineligibility shall be determined on a case-by-case basis by the Board in its sole discretion.

(2) Upon request of the removed Program panel member, exceptions to this provision may (but need not) be considered, denied, and/or granted at the discretion of the Board, ACBA staff, the Committee, or any combination thereof. Consideration of such a request is in no way a promise, guarantee, or commitment to be re-appointed following such removal.

#### **L. Attorneys' Fees and Expenses**

(1) As a condition of participation in the Program, Program panel members shall agree to handle all cases to which they are appointed according to the Program Fee Schedule then in effect.

(2) Reasonable and necessary expenses incurred during the course of representation of a defendant shall be reimbursed only on prior written approval by the Director. In certain circumstances, fee and/or cost requests may require additional review by the Committee. Investigation and expert hourly fees are limited as set forth in the Program Fee Schedule. Extraordinary requests shall be considered on a case-by-case basis.

(3) Expenses which may be incurred during the course of a trial or juvenile hearing must receive prior written approval by the Director or a Committee member. No payments shall be allowed for travel expenses or travel time of the Program panel member, telephone calls, parking fees or normal overhead expenses unless special or extraordinary circumstances exist which, in the sole discretion of the Director and Committee, justifies payment of such expenses.

(4) The procedure to be followed for filing special expense claims in capital cases is as follows:

(a) The Program panel member in a capital case shall secure a Court Order for expenses

pursuant to Penal Code Section 987.9 and present the Order to the Auditor-Controller's office for payment.

(5) Declarations for fees shall be subject to the following provisions:

(a) The Committee shall adopt standard declaration under penalty of perjury forms for the payment of fees and expenses (each, a "declaration"; collectively, "declarations.")

(b) Program panel members shall thoroughly acquaint themselves with the correct manner in which to complete and submit declarations. Declarations which are incomplete, inaccurate, or not submitted electronically, shall be rejected. Failure to accurately and completely submit a fee declaration is grounds for summary suspension or removal from the Program.

(c) The Director and/or Committee may review any declaration to determine whether or not it should be approved or modified. Program panel members shall be notified by the Program of any substantial fee modifications to a submitted declaration. If a Program panel member wishes to dispute a modified declaration, she or he shall promptly resubmit the declaration with written explanation to the Director. The Director has administrative authority to resolve all financial disputes concerning a declaration in an amount up to \$300 without further review by the Committee. If a financial dispute respecting a declaration exceeds \$300 and is not resolved to the satisfaction of the Program panel member, the Program panel member may thereafter submit a written request for a hearing before the Committee. The Committee's decision concerning all financial disputes shall be final for amounts less than \$5,000. For amounts greater than \$5,000, a Program panel member may submit a written request to the Board. The Board's decision concerning all financial disputes greater than \$5,000 shall be final.

(d) Subject and pursuant to the other provisions of these Rules and Regulations, if a Program panel member wishes to withdraw from a case with court approval, the Committee may decline to authorize payment or may authorize payment of such fees as circumstances warrant, given the status of the case at the time of withdrawal. Such declination shall be binding on the Program panel member.

## **M. Amendments**

(1) The Director and the Committee have a continuing responsibility to seek ways and means to improve the fairness and efficiency of the Program and the quality of the legal services provided in connection therewith and shall, from time to time, recommend such changes and additions to these Rules and Regulations as the Director and the Committee may deem appropriate, in their sole discretion.

(2) These Rules and Regulations are promulgated by the ACBA acting by and through its Board. The Board may change or amend these Rules and Regulations at any time without the necessity of giving prior notice. Any such change or amendment will govern and control a Program panel member's relationship with the Program following publication of the change or amendment in a form and by means deemed appropriate in the sole discretion of the Board, reasonably exercised.