

Public Defense Services Commission Legal Representation Plan for Death Penalty Cases

(Adopted June 14, 2007; revised January 16, 2014)

1. Responsible Agency

The Public Defense Services Commission is responsible for ensuring that defendants in death penalty cases who are entitled to and financially eligible for appointed counsel at state expense receive legal representation consistent with Oregon and national standards of justice.

2. Selection of Lawyers for Specific Cases

Effective June 14, 2007, except where existing contracts provide otherwise, when the court determines that a defendant in an aggravated murder case is entitled to appointed counsel the court shall notify the Office of Public Defense Services of the need for appointed counsel and of any circumstances of the alleged offense or of the defendant that may affect the selection of counsel in the case. The Office of Public Defense Services shall then advise the court of the attorney to be appointed as lead counsel in the case.

Regardless of whether formal legal proceedings have been commenced or the state has affirmatively declared that the death penalty will be sought, the Office of Public Defense Services may assign qualified counsel to represent any financially eligible person who is in custody and may face a possible sentence of death. For purposes of determining financial eligibility, the Office of Public Defense Services may presume eligibility for detained persons, subject to verification by court personnel upon the commencement of any formal legal proceedings.

Upon motion by lead counsel who has received authorization from the Office of Public Defense Services for the appointment of co-counsel for a specified number of hours, the court shall appoint the attorney or attorneys approved by the Office of Public Defense Services as co-counsel for the number of hours authorized. Additional hours for appointed co-counsel may be requested and authorized as provided in the Public Defense Payment Policies and Procedures.

The Office of Public Defense Services shall authorize appointment of co-counsel whenever it is reasonable and necessary considering both the circumstances of the case and lead counsel's circumstances and needs. A denial of a request for appointment of co-counsel may be appealed to the presiding judge of the circuit court as a denial of a request for a nonroutine expense under ORS 135.055(3)(c). However, a denial by the Office of Public Defense Services of a request for a particular attorney to serve as co-counsel is final.

3. Qualification, Monitoring, Removal, and Training of Defense Counsel

The Office of Public Defense Services shall:

- a. Recruit and approve attorneys for appointment to represent defendants in death penalty cases;
- b. Publish and update the list of attorneys approved for appointment in death penalty cases;
- c. Continue to publish Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense (“Qualification Standards”);
- d. Prepare and publish procedures for assignment of counsel in death penalty cases.

The Office of Public Defense Services should:

- a. Continue to require that attorneys approved for appointment to represent defendants in death penalty cases have demonstrated:
 - i. substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
 - ii. skill in the management and conduct of complex negotiations and litigation;
 - iii. skill in legal research, analysis, and the drafting of litigation documents;
 - iv. skill in oral advocacy;
 - v. skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
 - vi. skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
 - vii. skill in the investigation, preparation, and presentation of mitigating evidence; and
 - viii. skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements;
- b. Monitor the performance of court-appointed attorneys providing representation in death penalty cases to ensure that clients are receiving high quality legal representation;

- c. Periodically review the list of approved attorneys, withdraw approval from any attorney who fails to provide high quality legal representation as provided in the attorney's contract or in the Qualification Standards for non-contract attorneys, and re-approve an attorney whose approval has been withdrawn only in exceptional circumstances;
- d. Work with death penalty attorneys and organizations providing legal training for death penalty lawyers to create adequate training opportunities for such lawyers, and provide financial support if needed to make it possible for lawyers to participate in trainings which should include presentations in the following areas:
 - i. relevant state, federal, and international law;
 - ii. pleading and motion practice;
 - iii. pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
 - iv. jury selection;
 - v. trial preparation and presentation, including the use of experts;
 - vi. ethical considerations particular to capital defense representation;
 - vii. preservation of the record and of issues for post-conviction review;
 - viii. counsel's relationship with the client and his family;
 - ix. post-conviction litigation in state and federal courts;
 - x. the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science;
- e. Require attorneys in death penalty cases to have attended and successfully completed within the two-year period prior to certification of qualification at least 18 hours of specialized training on current issues in capital cases through established training programs awarding CLE credits;
- f. Investigate and maintain records concerning complaints made by judges, clients, attorneys or others about the performance of attorneys providing representation in death penalty cases and take appropriate corrective action without delay in accordance with the Public Defense Services Commission's Complaint Policy and Procedures and such additional policies as the Commission may adopt.

4. Defense Teams, Workload, Compensation and Performance Standards

- a. Unless the particular circumstances of the case or the defendant make such a team or a particular member of the team unnecessary for high quality representation, the Office of Public Defense Services shall require lead counsel at the trial level in each death penalty case to assemble a defense team including co-counsel, as needed and authorized under paragraph 2 above, an investigator and a mitigation specialist. If the team does not include at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments counsel shall seek authorization for funds to obtain such services from a qualified provider.
- b. The Office of Public Defense Services shall authorize funds for experts, investigative and other professional services that are reasonable and necessary for the investigation, preparation and presentation of the defense as provided in ORS 135.055 and the Public Defense Payment Policies and Procedures.
- c. The Office of Public Defense Services shall ensure that the workload of attorneys representing defendants in death penalty cases is maintained at a level that enables counsel to provide each client with high quality legal representation.
- d. To the extent that funds are available to do so and in light of its obligation to provide defense services in other types of public defense cases the Public Defense Services Commission shall ensure that counsel in death penalty cases are fully compensated at a rate that is commensurate with high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.
- e. To the extent that funds are available to do so and in light of its obligation to provide defense services in other types of public defense cases, the Public Defense Services Commission shall ensure that non-attorney members of the defense team are fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.
- f. The Public Defense Services Commission hereby establishes as the standards for performance for all counsel in death penalty cases the standards set forth in Guidelines 10.2 to 10.15.2 of the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Revised Edition, February 2003. (Exhibit A)

Exhibit A

Excerpt from
American Bar Association
Guidelines for the Performance of Defense Counsel in Death
Penalty Cases
Revised Edition
February 2003

[The following is an excerpt from the black letter guidelines. The entire Guidelines, complete with history, related standards, annotations and commentary may be found at:
<http://www.abanet.org/deathpenalty/resources/docs/HofstraLawReview.pdf>]

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Guideline 10.2 Applicability of Performance Standards

Counsel should provide high quality legal representation in accordance with these Guidelines for so long as the jurisdiction is legally entitled to seek the death penalty.

Guideline 10.3 Obligations of Counsel Respecting Workload

Counsel representing clients in death penalty cases should limit their caseloads to the level needed to provide each client with high quality legal representation in accordance with these Guidelines.

Guideline 10.4 The Defense Team

- A. When it is responsible for designating counsel to defend a capital case, the Responsible Agency should designate a lead counsel and one or more associate counsel. The Responsible Agency should ordinarily solicit the views of lead counsel before designating associate counsel.**
- B. Lead counsel bears overall responsibility for the performance of the defense team, and should allocate, direct, and supervise its work in accordance with these Guidelines and professional standards.**
 - 1. Subject to the foregoing, lead counsel may delegate to other members of the defense team duties imposed by these Guidelines, unless:**
 - a. The Guideline specifically imposes the duty on “lead counsel,” or**
 - b. The Guideline specifically imposes the duty on “all counsel” or “all members of the defense team.”**
- C. As soon as possible after designation, lead counsel should assemble a defense team by:**
 - 1. Consulting with the Responsible Agency regarding the number and identity of the associate counsel;**
 - 2. Subject to standards of the Responsible Agency that are in accord with these Guidelines and in consultation with associate counsel to the extent practicable, selecting and making any appropriate contractual agreements with non-attorney team members in such a way that the team includes:**
 - a. at least one mitigation specialist and one fact investigator;**
 - b. at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments; and**
 - c. any other members needed to provide high quality legal representation.**
- D. Counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. If such resources are denied, counsel**

should make an adequate record to preserve the issue for post-conviction review.

Guideline 10.5 Relationship with the Client

- A. Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust with the client, and should maintain close contact with the client.**
- B. 1. Barring exceptional circumstances, an interview of the client should be conducted within 24 hours of initial counsel's entry into the case.**
 - 2. Promptly upon entry into the case, initial counsel should communicate in an appropriate manner with both the client and the government regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards.**
 - 3. Counsel at all stages of the case should re-advise the client and the government regarding these matters as appropriate.**
- C. Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:**
 - 1. the progress of and prospects for the factual investigation, and what assistance the client might provide to it;**
 - 2. current or potential legal issues;**
 - 3. the development of a defense theory;**
 - 4. presentation of the defense case;**
 - 5. potential agreed-upon dispositions of the case;**
 - 6. litigation deadlines and the projected schedule of case-related events; and**
 - 7. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).**

Guideline 10.6 Additional Obligations of Counsel Representing a Foreign National

- A. Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals.**
- B. Unless predecessor counsel has already done so, counsel representing a foreign national should:**
 - 1. immediately advise the client of his or her right to communicate with the relevant consular office; and**
 - 2. obtain the consent of the client to contact the consular office. After**

obtaining consent, counsel should immediately contact the client's consular office and inform it of the client's detention or arrest.

- a. Counsel who is unable to obtain consent should exercise his or her best professional judgment under the circumstances.

Guideline 10.7 Investigation

A. Counsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty.

1. The investigation regarding guilt should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.
2. The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented.

- B.**
1. Counsel at every stage have an obligation to conduct a full examination of the defense provided to the client at all prior phases of the case. This obligation includes at minimum interviewing prior counsel and members of the defense team and examining the files of prior counsel.
 2. Counsel at every stage have an obligation to satisfy themselves independently that the official record of the proceedings is complete and to supplement it as appropriate.

Guideline 10.8 The Duty to Assert Legal Claims

A. Counsel at every stage of the case, exercising professional judgment in accordance with these Guidelines, should:

1. consider all legal claims potentially available; and
2. thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted; and
3. evaluate each potential claim in light of:
 - a. the unique characteristics of death penalty law and practice; and
 - b. the near certainty that all available avenues of post-conviction relief will be pursued in the event of conviction and imposition of a death sentence; and
 - c. the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited; and
 - d. any other professionally appropriate costs and benefits to the assertion of the claim.

B. Counsel who decide to assert a particular legal claim should:

1. **present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction; and**
 2. **ensure that a full record is made of all legal proceedings in connection with the claim.**
- C. Counsel at all stages of the case should keep under consideration the possible advantages to the client of:**
1. **asserting legal claims whose basis has only recently become known or available to counsel; and**
 2. **supplementing claims previously made with additional factual or legal information.**

Guideline 10.9.1 The Duty to Seek an Agreed-Upon Disposition

- A. Counsel at every stage of the case have an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these Guidelines to achieve an agreed-upon disposition.**
- B. Counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition. In so doing, counsel should fully explain the rights that would be waived, the possible collateral consequences, and the legal, factual, and contextual considerations that bear upon the decision. Specifically, counsel should know and fully explain to the client:**
1. **the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included or alternative offenses;**
 2. **any collateral consequences of potential penalties less than death, such as forfeiture of assets, deportation, civil liabilities, and the use of the disposition adversely to the client in penalty phase proceedings of other prosecutions of him as well as any direct consequences of potential penalties less than death, such as the possibility and likelihood of parole, place of confinement and good-time credits;**
 3. **the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements;**
 4. **the governing legal regime, including but not limited to whatever choices the client may have as to the fact finder and/or sentencer;**
 5. **the types of pleas that may be agreed to, such as a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere or other plea which does not require the client to personally acknowledge guilt, along with the advantages and disadvantages of each;**
 6. **whether any agreement negotiated can be made binding on the court, on penal/parole authorities, and any others who may be involved;**
 7. **the practices, policies and concerns of the particular jurisdiction, the judge and prosecuting authority, the family of the victim and any other**

persons or entities which may affect the content and likely results of plea negotiations;

8. concessions that the client might offer, such as:
 - a. an agreement to proceed waive trial and to plead guilty to particular charges;
 - b. an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;
 - c. an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case;
 - d. an agreement to forego in whole or part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications;
 - e. an agreement to provide the prosecution with assistance in investigating or prosecuting the present case or other alleged criminal activity;
 - f. an agreement to engage in or refrain from any particular conduct, as appropriate to the case;
 - g. an agreement with the victim's family, which may include matters such as: a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution;
 - h. agreements such as those described in Subsections 8 (a)-(g) respecting actual or potential charges in another jurisdiction;
9. benefits the client might obtain from a negotiated settlement, including:
 - a. a guarantee that the death penalty will not be imposed;
 - b. an agreement that the defendant will receive a specified sentence;
 - c. an agreement that the prosecutor will not advocate a certain sentence, will not present certain information to the court, or will engage in or refrain from engaging in other actions with regard to sentencing;
 - d. an agreement that one or more of multiple charges will be reduced or dismissed;
 - e. an agreement that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;
 - f. an agreement that the client may enter a conditional plea to preserve the right to further contest certain legal issues;
 - g. an agreement that the court or prosecutor will make specific recommendations to correctional or parole authorities regarding the terms of the client's confinement;
 - i. agreements such as those described in Subsections 9 (a)-(g) respecting actual or potential charges in another jurisdiction.

- C. Counsel should keep the client fully informed of any negotiations for a disposition, convey to the client any offers made by the prosecution, and discuss with the client possible negotiation strategies.**
- D. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement along with the advantages, disadvantages and potential consequences of the agreement.**
- E. If a negotiated disposition would be in the best interest of the client, initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Similarly, a client's initial opposition should not prevent counsel from engaging in an ongoing effort to persuade the client to accept an offer of resolution that is in the client's best interest.**
- F. Counsel should not accept any agreed-upon disposition without the client's express authorization.**
- G. The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting litigation.**

Guideline 10.9.2 Entry of a Plea of Guilty

- A. The informed decision whether to enter a plea of guilty lies with the client.**
- B. In the event the client determines to enter a plea of guilty:**
 - 1. Prior to the entry of the plea, counsel should:**
 - a. make certain that the client understands the rights to be waived by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;**
 - b. ensure that the client understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other consequences to which he or she will be exposed by entering the plea;**
 - c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions in court and providing a statement concerning the offense.**
 - 3. During entry of the plea, counsel should make sure that the full content and conditions of any agreements with the government are placed on the record.**

Guideline 10.10.1 Trial Preparation Overall

- A. As the investigations mandated by Guideline 10.7 produce information, trial counsel should formulate a defense theory. Counsel should seek a theory that will be effective in connection with both guilt and penalty, and should seek to**

minimize any inconsistencies.

Guideline 10.10.2 Voir Dire and Jury Selection

- A. Counsel should consider, along with potential legal challenges to the procedures for selecting the jury that would be available in any criminal case (particularly those relating to bias on the basis of race or gender), whether any procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Such challenges may include challenges to the selection of the grand jury and grand jury forepersons as well as to the selection of the petit jury venire.**
- B. Counsel should be familiar with the precedents relating to questioning and challenging of potential jurors, including the procedures surrounding “death qualification” concerning any potential juror’s beliefs about the death penalty. Counsel should be familiar with techniques: (1) for exposing those prospective jurors who would automatically impose the death penalty following a murder conviction or finding that the defendant is death-eligible, regardless of the individual circumstances of the case; (2) for uncovering those prospective jurors who are unable to give meaningful consideration to mitigating evidence; and (3) for rehabilitating potential jurors whose initial indications of opposition to the death penalty make them possibly excludable.**
- C. Counsel should consider seeking expert assistance in the jury selection process.**

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C. Counsel should consider seeking expert assistance in the jury selection process.

Guideline 10.11 The Defense Case Concerning Penalty

- A. As set out in Guideline 10.7(A), counsel at every stage of the case have a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation or rebuts the prosecution's case in aggravation.
- B. Trial counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between the strategy for the sentencing phase and for the guilt/innocence phase.
- C. Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.
- D. Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning penalty that they intend to present to the sentencing or reviewing body or individual, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.
- E. Counsel should consider, and discuss with the client, the possible consequences of having the client testify or make a statement to the sentencing or reviewing body or individual.
- E. In deciding which witnesses and evidence to prepare concerning penalty, the areas counsel should consider include the following:
 - 1. Witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, or would otherwise support a sentence less than death;
 - 2. Expert and lay witnesses along with supporting documentation (*e.g.* school records, military records) to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation, or adaptation to prison; to explain possible treatment programs; or otherwise support a sentence less than death; and/or to rebut or explain evidence presented by the prosecutor;
 - 3. Witnesses who can testify about the applicable alternative to a death sentence and/or the conditions under which the alternative sentence would be served;
 - 4. Witnesses who can testify about the adverse impact of the client's execution

- on the client's family and loved ones;
5. **Demonstrative evidence, such as photos, videos, and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts, and letters of praise or reference.**

G. In determining what presentation to make concerning penalty, counsel should consider whether any portion of the defense case will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions *in limine*) to ensure that the defense case concerning penalty is constricted as little as possible by this consideration, and should make a full record in order to support any subsequent challenges.

H. Trial counsel should determine at the earliest possible time what aggravating factors the prosecution will rely upon in seeking the death penalty and what evidence will be offered in support thereof. If the jurisdiction has rules regarding notification of these factors, counsel at all stages of the case should object to any non-compliance, and if such rules are inadequate, counsel at all stages of the case should challenge the adequacy of the rules.

I. Counsel at all stages of the case should carefully consider whether all or part of the aggravating evidence may appropriately be challenged as improper, inaccurate, misleading or not legally admissible.

J. If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

1. **carefully consider**
 - a. **what legal challenges may appropriately be made to the interview or the conditions surrounding it, and**
 - b. **the legal and strategic issues implicated by the client's cooperation or non-cooperation;**
2. **insure that the client understands the significance of any statements made during such an interview ; and**
3. **attend the interview.**

K. Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, or are inaccurate, or confusing and should offer alternative instructions. Post-conviction counsel should pursue these issues through factual investigation and legal argument.

L. Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why death is not suitable punishment for their particular client.

Guideline 10.12 The Official Presentence Report

A. If an official presentence report or similar document may or will be presented to the court at any time, counsel should become familiar with the procedures governing preparation, submission, and verification of the report. In addition, counsel should:

- 1. where preparation of the report is optional, consider the strategic implications of requesting that a report be prepared;**
- 2. provide to the report preparer information favorable to the client. In this regard, counsel should consider whether the client should speak with the person preparing the report; if the determination is made to do so, counsel should discuss the interview in advance with the client and attend it;**
- 3. review the completed report;**
- 4. take appropriate steps to ensure that improper, incorrect or misleading information that may harm the client is deleted from the report;**
- 5. take steps to preserve and protect the client's interests where the defense considers information in the presentence report to be improper, inaccurate or misleading.**

Guideline 10.13 The Duty to Facilitate the Work of Successor Counsel

In accordance with professional norms, all persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client and should cooperate fully with successor counsel. This duty includes, but is not limited to:

A. maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the litigation;

B. providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;

C. sharing potential further areas of legal and factual research with successor counsel; and

D. cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

Guideline 10.14 Duties of Trial Counsel After Conviction

- A. Trial counsel should be familiar with all state and federal post-conviction options available to the client. Trial counsel should discuss with the client the post-conviction procedures that will or may follow imposition of the death sentence.**
- B. Trial counsel should take whatever action(s), such as filing a notice of appeal, and/or motion for a new trial, will maximize the client's ability to obtain post-conviction relief.**
- C. Trial counsel should not cease acting on the client's behalf until successor counsel has entered the case or trial counsel's representation has been formally terminated. Until that time, Guideline 10.15 applies in its entirety.**
- D. Trial counsel should take all appropriate action to ensure that the client obtains successor counsel as soon as possible.**

Guideline 10.15.1 Duties of Post-Conviction Counsel

- A. Counsel representing a capital client at any point after conviction should be familiar with the jurisdiction's procedures for setting execution dates and providing notice of them. Post-conviction counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution.**
- B. If an execution date is set, post-conviction counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available fora.**
- C. Post-conviction counsel should seek to litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality capital defense representation, including challenges to any overly restrictive procedural rules. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review.**
- D. The duties of the counsel representing the client on direct appeal should include filing a petition for *certiorari* in the Supreme Court of the United States. If appellate counsel does not intend to file such a petition, he or she should immediately notify successor counsel if known and the Responsible Agency.**
- E. Post-conviction counsel should fully discharge the ongoing obligations imposed by these Guidelines, including the obligations to:**
 - 1. maintain close contact with the client regarding litigation developments; and**
 - 2. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;**

3. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments; and
4. continue an aggressive investigation of all aspects of the case.

Guideline 10.15.2 Duties of Clemency Counsel

A. Clemency counsel should be familiar with the procedures for and permissible substantive content of a request for clemency.

B. Clemency counsel should conduct an investigation in accordance with Guideline 10.7.

C. Clemency counsel should ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case and jurisdiction.

D. Clemency counsel should ensure that the process governing consideration of the client's application is substantively and procedurally just, and, if it is not, should seek appropriate redress.