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HIRING KENT RUSSELL FOR MY HABEAS CORPUS CASE (Reprinted from *California Habeas Handbook*, 6th Ed., Ch. 11)

Below is the fee agreement for *new* cases, in which no habeas corpus petition has ever been filed in any court. If you have an ongoing case, this standard agreement will not apply, and you should call the office to discuss your matter; if we believe we can help you, we will let you know then what the required retainer would be.

STANDARD FEE AGREEMENT FOR NEW CASES

Minimum Retainer Requirement

The minimum retainer for new cases is **\$15,000**. This amount must be paid *before* I will review any case files.

Flat Fee Applies in Phase 1

Phase 1 is an evaluation phase. It begins with a “Retainer Letter” that I will send to the prisoner and a designated family member after I receive the retainer and most or all of the “File Materials” listed herein. Phase 1 ends with the “Preliminary Evaluation”, defined and explained below. The attorney’s fee for Phase 1 is a “flat fee” of \$10,000, which is allocated entirely to legal services, and is non-refundable.

Costs

The remaining \$5,000 of the \$15,000 retainer is allocated to costs. If any portion of the \$5,000 is not used up in Phase 1 it will be refunded to the client along with an accounting for what has been spent.

File Materials

I will need the following file materials, most of which are used on the direct appeal, and are commonly returned to the prisoner after the direct appeal is over. If you cannot locate these documents, they will have to be copied at your expense.

- Reporter’s Transcript (verbatim transcript of the trial).
- Clerk’s Transcript (indexed copy of all documents filed in the trial court).
- Appellate Briefs (Appellant’s Opening Brief, Respondent’s Brief, Appellant’s Reply Brief, any supplemental briefs).
- Petition for Review (filed in California Supreme Court during direct appeal).
- Court Opinion from the direct appeal.
- Any court filings or orders subsequent to the direct appeal.

Additionally, where applicable, the client should provide copies of (a) correspondence between the prisoner and any previous lawyers; (b) any prior case evaluations by other counsel; and (c) a complete copy of any habeas petition the prisoner has already filed on his own.

Limits on Phase 1 Legal Services

Phase 1 includes unlimited contacts with the prisoner by letter, phone, or e-mail, but it does not include any personal prison visits with the prisoner. Also excluded from Phase 1 are any inquiries about aspects of the case other than those that are related to the history of the case to date and to any potential habeas corpus claims. And, although Phase 1 includes a targeted review of trial counsel's file, it does not contemplate listening to tapes, viewing court exhibits, or reviewing police reports that are not directly related to potentially viable habeas corpus claims.

Experienced and Trusted Associate Attorneys Will Work Under My Direct Supervision

Since 2010, although I have continued to plot strategy and to supervise all aspects of the case, after I accept a new case, I will assign the day-to-day work to a short list of hand-picked, experienced, associate attorneys. Each associate attorney is extremely talented and specially qualified in criminal law generally and habeas corpus in particular, and will make personal contact with the prisoner and the family as they work on issues and activities under my direction. Although the associate attorneys will handle the matter on a daily basis, I will be personally reviewing all of their work before any strategic decisions are made, and before any Preliminary Evaluation is completed or anything is filed in any court.

Preliminary Evaluation

My office will conduct a "Preliminary Evaluation" of all new cases. The Preliminary Evaluation, although "preliminary" in the sense that it is done prior to any habeas corpus petition being filed, is actually a thorough written evaluation of the entire case and a comprehensive analysis of all the legal issues relevant to any potential habeas corpus claims. The typical Preliminary Evaluation is more than 25 pages in length, and is based on a targeted review of the briefs, court opinions, final arguments, correspondence from the prisoner, trial counsel's file, and any other documents which are essential to a solid understanding of the case.

The current cost of the Preliminary Evaluation is \$10,000, which is non-refundable. In the Preliminary Evaluation I will summarize the history of the case through the trial and direct appeal, the potential habeas claims which have been brought or can be brought, and the chances for ultimate success on any of the claims. Both exhausted and un-exhausted claims will be covered, as well as any claims the prisoner has suggested, whether or not they are ultimately determined to be potentially meritorious.

The Preliminary Evaluation will always be finalized and sent to the client before the AEDPA runs. In cases where we have been retained and the required File Materials have been provided to us 120 days or more before the AEDPA statute of limitations date, the Preliminary Evaluation will usually be provided no less than 30 days before the AEDPA deadline.

End of Phase 1 and Client Options

Phase 1 ends with the Preliminary Evaluation. The Preliminary Evaluation will determine whether, in my judgment, there are any habeas corpus claims that have at least a 10% chance of success. If not, I will say so, and provide detailed reasons for that determination.

Typically I will decline to be further involved in any case where the 10% test has not been satisfied, and at that point I will return the file and provide a refund of any costs that have not been used up to date. However, in certain cases, if there are claims that do not meet the 10% threshold but are nevertheless not deemed "frivolous" (hopeless under current law), I will consider going forward with the case if the client understands and accepts the challenge with eyes open.

If I do determine, pursuant to the standards in the previous paragraphs, that the case is potentially viable, I will estimate the legal fees and costs that will be required to pursue those claims on state and federal habeas, and will propose a specific plan for further action in the case. Typically that will involve Phase 2 (exhaustion of unexhausted claims in state court) and Phase 3 (federal habeas corpus in U.S. District Court). I will then request a further retainer in a specified amount and by a specified date, and the client will have the

option of moving forward with the suggested plan, provided that they deposit the specified additional retainer within the time allowed.

Hourly Rate Applies in Phases 2 and 3.

Any cases which proceed beyond Phase 1 to Phase 2 and Phase 3 will require an hourly fee arrangement. This requires the client to pay an hourly rate for my services and those of my associates, plus costs (e.g., copying, delivery, postage, filing fees, expert witness fees, and investigation costs). The hourly rate is currently **\$350** per hour, and there is no double-billing – for example, if my associate and I spend an hour together on the case, you will be charged for one hour, not two, plus costs. After the initial retainer is exhausted, the client will have to replenish with additional payments in a specified sum in order for my firm to continue working on the case.

There is no maximum fee for any case, the total amount of fees and costs being driven solely by the number of hours we have to put in and the amount of costs expended. However, clients will periodically be provided with itemized billing statements calculated to the tenth of every hour expended and every dollar paid out in costs to third parties. The client is free upon written notice and payment of any outstanding fees to terminate our legal services at any time, with or without cause.

Free Copy of the *California Habeas Handbook*

All new clients receive a free, signed copy of the *California Habeas Handbook*, which will be provided to the prisoner or a designated family member.

RETAINER PROCEDURE

Keep in mind that we usually need 90-120 days to complete a Preliminary Evaluation or otherwise meet an applicable deadline, and that this time period does not start until we have all the file materials necessary to do my review. Therefore, and because I reject the case after the Preliminary Evaluation is done, it's wise to retain me as much in advance of a pending statute of limitations or other deadline as possible.

To retain me for a particular case, please use the following procedure after you have made the necessary financial arrangements to have the \$15,000 retainer available.

1.

Have your family member contact my office by phone or e-mail to make sure of my availability.

I will usually decline new cases in which there are less than 90 days remaining before the AEDPA deadline date. I tend to be more flexible on pending cases (which skip Phase 1 and go directly to an hourly fee arrangement), because it is usually possible to substitute in on a pending matter and ask the court for additional time, which is not possible with the AEDPA statute of limitations. In any event, I can't take on a new case unless I can fit it into my existing schedule, so . Therefore, when your family is ready to send the retainer but before it's actually sent, contact my office to by phone or e-mail to make sure that I will be able to take on the case within the existing time constraints.

2.

Send the required minimum retainer.

After I've accepted the case for evaluation, you will need to promptly send your payment to me. If payment is made by mail, checks or money orders must be used. (Sorry, but we don't accept credit cards at this time.)

Personal checks can be sent by regular mail. Please do *not* use the post office's certified mail service, because if I am not in when the post office attempts a certified mail delivery they will return the item to the post office instead of re-delivering it.

When sending money orders or file materials, always use Fed-Ex, UPS, Priority or Express Mail, or some other track-able method.

Within a day or two of my receipt of the retainer, I will send your family member or representative a written Retainer Letter which specifies the terms of my representation along the lines set forth in the Summary, above. The Retainer Letter will also include a calculation of the AEDPA statute of limitations, a brief overview of the case, directions for contacting me and/or the designated associate attorney by phone or letter, and often a series of specific questions to jump-start our correspondence.

Once I have been retained, copies of all correspondence and documents that I generate will be sent both to the prisoner and to the family member who is paying my fees.

3.

Send the File Materials for review.

The file materials can either be sent along with the retainer check or immediately thereafter. Please send as many of the File Materials as you have as soon as possible, even if you don't have all of them. A list of the required items is included in the "File Materials" section, above.

4.

Follow the instructions in my Retainer Letter.

If there are missing items in the File Materials you initially provide to me, I will identify those in my Retainer Letter and ask that you follow up to get them to me as soon as possible. Along with the copy of the Retainer Letter that I send to the prisoner, I will usually include one or more authorization forms for the prisoner to date, sign, and return to me so that we can obtain trial counsel's file and any other relevant documents. And, as I said earlier, I will often include a list of specific questions about the case for the prisoner to answer and for us to follow up on. Please faithfully follow these and other instructions in the Retainer Letter so that we can get the case in shape to begin the investigation without delay.