

**APPENDIX III**  
IAC Cases where Deficient Performance Found<sup>1</sup>

County	date IAC case decided	Most serious crime	Death Penalty?	Case name and Citation		Year of Conviction	Type of Trial Defense Attorney <sup>2</sup>	Year Admitted to Bar	# yrs. atty. admitted to Bar upon conviction	Disciplinary Proceedings	Deficient Performance AND Prejudicial	Deficient Performance BUT No Prejudice	Description of IAC claim	IAC classification
Alameda	1998	Attempted Voluntary Manslaughter	No	Cheung v. Maddock 32 F. Supp. 2d 1150 (N.D. Cal. 1998)	Federal Habeas	1995	Private	1980	15	None	xxx		1) Failure to investigate victim's medical records showing that he was intoxicated 2) Failure to investigate defense that defendant's companion was the shooter 3) Failure to translate companion's tape-recorded statement in Cantonese admitting to the shooting and offer it into evidence.	Failure to Investigate: defense
Alameda	2004	Burglary - First degree	No	Mitchell v. Ayers 309 F. Supp. 2d 1146 (2004)	Federal Habeas	1988	Private	1979	9	3/13/1999: Private reproof, public disclosure. Case #96-O-1533	x		Failure to investigate witness who could have corroborated D's account of events	Failure to Investigate: defense
Alameda	2006	Murder - First degree	Yes	Hovey v. Ayers 458 F. 3d. 892 (2006)	Federal Habeas	1981	Public Defender	1971	10	None	x		1) Failure to investigate mental health records relevant to mitigation. 2) Failure to properly prepare expert witness	1) Failure to Investigate: Sentencing: death penalty mitigation 2) Lack of Trial Skills: failure to prepare expert witness
Alameda	2006	Murder - First Degree	Yes	In re Thomas 37 Cal.4th 1249 (2006) People v. DeGarmo 2003 WL 1751792 [not published]	State Habeas	1986	Public Defender	1967	19	None		x	Failure to investigate defense that another man was shooter	Failure to Investigate
Butte	2003	Forgery	No	People v. DeGarmo 2003 WL 1751792 [not published]	Direct Appeal	2002	Private	1999	3	None	x		Failure to object to erroneous restitution order	Other Sentencing Error
Contra Costa	1999	Felon in possession of firearm	No	People v. Burnett 71 Cal.App.4th 151(1999)	Direct Appeal	1996	Public Defender	1991	5	None	x		Failure to object to Prosecutor's closing argument based on a firearms incident different from and not transactionally related to the offense shown at the preliminary hearing.	1) Lack of Knowledge of Law: procedure 2) Lack of Trial Skills: failure to object to prosecutor's closing argument.
Contra Costa	2002	Felony Child Abuse	No	People v. Eldridge 2002 WL 31103022 [not published]	Motion for New Trial	1996	Public Defender	1976	20	None. Inactive	x		Failure to investigate medical records and call expert witness to testify about complex medical condition of fragile infants born to drug addicted mothers and placed in defendant's care as foster mother.	1) Failure to Investigate-defense 2) Failure to present forensic evidence 3) Failure to call expert
Contra Costa	2002	Murder - First degree	Yes	Jennings v. Woodford 290 F.3d 1006 (2002)	Federal Habeas	1993	unknown	1968	25	Too many to list here - currently disbarred. Disbarred in 2002 - possibly in connection with this case	x		Failure to investigate mental health and drug abuse issues that might have raised reasonable doubt about defendat's ability to form the requisite intent to justify a first degree murder conviction and thus avoid the death penalty	1) Failure to Investigate 2) Failure to raise mental health issue
El Dorado	2002	Murder - First degree with special circumstances	Yes	Karis v. Calderon 283 F.3d 1117(2002)	Federal Habeas	1982	unknown				x		Failure to investigate and present significant mitigating evidence of defendant's childhood abuse during penalty phase	Failure to Investigate
El Dorado	2004	Murder - Second Degree	No	Lewis v. Mayle 391 F.3d 989 (2004)	Federal Habeas	1997	Private	1973	24	None	x		Conflict of Interest arising from prior representation of key witness who testified against defendant resulting in adverse representation due to failure to properly impeach	Conflict of Interest
Fresno	2002	Murder - Second degree	No	Flores-Ortega v. Roe 39 Fed.Appx. 604 (2002)	Federal Habeas	1993	Public Defender	1976	17	None	x		Failure to consult with defendant regarding whether to file an appeal from conviction	1) Failure to File Notice of Appeal 2) Negligence

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Humboldt	1998	Murder - Second degree	No	Seidel v. Merkel 146 F.3d 750 (1998)	Federal Habeas	1991	unknown	1976	15	None	x		Failure to conduct any investigation into defendant's psychiatric impairment despite the fact that it was clear from evidence available to counsel at time of trial that defendant had extensive history of mental problems based on organic brain damage which affected his perception of external threats and was relevant to self defense claim.	1) Failure to Investigate: defense 2) Failure to raise mental health issue - other
Humboldt	2003	Violation of Probation	No	People v. Aveja 2003 WL 194988 [not published]	Direct Appeal	2001	Public Defender	1983	18	None	x		Failure to correct error in probation report that incorrectly stated that a sentence of imprisonment had previously been imposed and suspended, when no sentence had been imposed	1) Lack of knowledge of law 2) Sentencing Error
Kern	2001	Child Endangerment	No	People v. Donaldson 113 Cal. Rptr. 2d 548 (2001)	Direct Appeal	1999	Public Defender	1995	4	None	xx		1) Failure to object to Prosecutor's testimony before she took the stand. 2) Failure to object to Prosecutor's closing argument, where she expressed her personal belief in D's guilt	1) Lack of Knowledge of Law-procedure 2) Lack of Trial Skills: failure to object to prosecutor's closing argument
Kern	2002	Transportation and Poss. of Methamphetamine	No	People v. McCombs 2002 WL 31863511 [not published]	Direct Appeal	2001	Assigned Counsel	1995	6	None	x		Failure to object to the admission of "assertive conduct" statement made in violation of Miranda	1) Lack of Knowledge of Law: procedure 2) Failure to Suppress Evid.
Kern	2003	Transportation of methamphetamine	No	People v. De La Cerda 2003 WL 21224079 [not published]	Direct Appeal	2000	Public Defender	1982	18	None	x		Failure to object to police officer's purported expert testimony offered to prove defendant's subjective knowledge of both the nature and presence of methamphetamine found in vehicle in which he was a passenger.	Lack of Knowledge of Law: evidence
Kern	2004	Armed Robbery	No	People v. Hernandez 2004 WL 516691 [not published]	Direct Appeal	2002	Private	1982	20	None	x		Failure to request appropriate jury instruction on "arming" enhancement for personally using a firearm	Lack of knowledge of law
Kern	2006	Murder - First Degree	No	Alvary v. Cambra 211 Fed.Appx. 647 (2006)	Federal Habeas	1997	Private	1984	13	Several disciplinary actions. Resigned in 1998 with charges pending.		x	Counsel arrested for narcotics violation spent night in jail before giving closing argument which was disjointed and unintelligible	Other
Kings	2003	Continuous sexual abuse of a minor	No	People v. Stevens 2003 WL 22800582 [not published]	Direct Appeal	2002	Public Defender	1988	14	None	xx		1) Failure to raise the statute of limitations as a defense 2) Failure to request jury instructions regarding the applicability of the tolling provision	Lack of knowledge of law
Los Angeles	1997	Murder - First Degree	Yes	Bloom v. Calderon 132 F. 3d 1267 (1997)	Federal Habeas	1983	Assigned Counsel	1967	16	1971: public reprobation; 1997: discipline probation w/o actual suspension	x		Counsel delayed contacting psychiatric expert until just days before trial and did not investigate family social history which would have provided expert with evidence of severe childhood abuse and brain damage relevant to mens rea defenses.	Failure to Investigate: defense
Los Angeles	1998	Attempted Murder	No	Brown v. Myers 137 F.3d 1154(1998)	Federal Habeas	1987	Public Defender	1972	15	None	x		Failure to investigate and present alibi defense	Failure to Investigate: defense

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Los Angeles	2002	Armed Robbery	No	People v. Holguin 2002 WL 31862857 [not published]	Direct Appeal	2001	Assigned Counsel				x		Prosecutor filed amended strike allegation after the jury had been discharged. Counsel failed to object on the proper ground that defendant was entitled to have the same jury decide all strike allegations	Lack of Knowledge of Law: procedure
Los Angeles	2002	Robbery	No	People v. Kindle 2002 WL1554118 [not published]	Direct Appeal	2000	Public Defender	1994	6	None	x		Failure to offer an eyewitness identification expert	Failure to call expert
Los Angeles	2002	Attempted Murder	No	Gentry v. Roe 320 F.3d 891 (2002)	Federal Habeas	1997	Private	1988	9	None	x		Counsel's perfunctory closing argument which called defendant derogatory names and failed to address weaknesses in state's case constituted deficient representation.	Lack of Trial Skills: Closing Argument
Los Angeles	2002	Assault w/ Deadly Weapon	No	Black v. Larson 45 Fed. Appx. 653 [not published]	Federal Habeas	1995	Public Defender	1983	12	Suspended 1983 for failure to pay bar dues; reinstated later that year	x		Failure to interview and call two eyewitnesses who would have testified contrary to victim that defendant did not have a weapon during altercation.	Failure to Investigate: defense
Los Angeles	2002	Attempted Murder	No	Avila v. Galaza 297 F. 3d. 911(2002)	Federal Habeas	1991	Private	1973	18	Numerous disciplinary actions:privately reproved in 1989 and disciplined in 1995 for failing to perform legal services competently, return client files or keep records of client funds. In 2002 given 5 years probation for mishandling personal injury cases and ethical violations regarding client funds. Still active.	x		Failure to investigate/introduce evidence that Defendant's brother was the shooter	Failure to Investigate: defense
Los Angeles	2003	Making Terrorist Threats	No	In re Beltran 2003 WL 21153291 [not published]	State Habeas	1999	Private	1982	17	None	x		Counsel affirmatively misadvised defendant regarding whether he could be deported based on guilty plea.	Plea Advice: immigration
Los Angeles	2003	Murder - First degree	No	People v. Paredes 2003 WL 1958452 [not published]	Direct Appeal	1998	Assigned Counsel	1959	39	None	x		Counsel representing two co-defendants mistakenly waived any objection to one co-defendant's taped statement which implicated the other defendant.	1) Conflict of Interest 2) Negligence
Los Angeles	2003	Murder	No	Goldstein v. Harris 82 Fed. Appx. 592 (2003) (not published)	Federal Habeas	1984	Private	1966	18	None	x		Failure to interview sole eyewitness to uncover impermissibly suggestive photo identification, where no physical evidence linked D to crime, counsel knew that witness's identification contradicted testimony of other witnesses for prosecution, and prosecution's other main witness was notorious jailhouse informant	1) Failure to Investigate: impeachment 2) Failure to suppress: Eyewitness Identifier
Los Angeles	2003	Robbery - Second Degree	No	People v. Whitaker 2003 WL 21943630 [not published]	Direct Appeal	2001	unknown				x		Failure to seek suppression of defendant's involuntary confession based on promises of leniency	Failure to suppress inadmissible evidence

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Los Angeles	2003	Murder - Second degree	No	People v. Boyd 2002 WL 31723052 [not published]	Direct Appeal	2001	unknown				x		Failure to request self defense jury instruction on antecedent threats made to defendan!	Lack of knowledge of law
Los Angeles	2003	Assault with a Deadly Weapon	No	In re De la Torre 2002 WL 276104 [not published]	Federal Habeas	1997	unknown					x	Failure to advise defendant concerning immigration consequences of his plea	Guilty plea advice
Los Angeles	2003	Attempted Robbery	No	Aguirre v Alameida 120 Fed. Appx. 721(2003) [not published]	Federal Habeas	2000	unknown				x		1) Failure to investigate post tramatic stress disorder 2) Failure to call expert	1) Failure to Investigate 2) Failure to Raise Mental Health Issue
Los Angeles	2003	Possession of cocaine base	No	People v Harris 2003 WL21766527 [not published]	Direct Appeal	2001	Private				x		Failure to investigate prior convictions to determine if valid strikes and misadvising defendant as to maximum sentence if convicted at trial	1) Failure to Investigate 2) Guilty Plea Advice
Los Angeles	2004	Possession of contraband	No	Cortez v. Terhune 2004 WL 958057 [not published]	Federal Habeas	2003	Public Defender	1966	37	None	x		Failure to comply with "Uniform Act" to secure out of state witness precluded admission of testimony that man in Arizona prison had admitted to sole possession of drugs found in his apartment	Lack of Knowledge of Law: procedure
Los Angeles	2004	Murder - First degree	Yes	In re Lucas 33 Cal.4th 682 (2004)	State Habeas	1987	Assigned Counsel	Atty 1: 1962; Atty 2: 1969	Atty 1: 25 Atty 2: 18	Atty 1: Inactive on 1/1/02; Atty 2: none	x		Failure to investigate available mitigation evidence of childhood abuse	Failure to Investigate: Sentencing: death penalty mitigation
Los Angeles	2004	Felon in Possession of a Firearm	No	People v. Walker 2004 WL 2809518 [not published]	Direct Appeal	2003	unknown				x		Failure to renew a motion to suppress illegally obtained evidence at trial	Lack of knowledge of law
Los Angeles	2004	Assault on a Peace Officer	No	People v. Robinson 2004 WL 370737 [not published]	State Habeas	2002	Public Defender				xx		1) Failure to locate and interview alibi witnesses 2) Failure to conduct ballistics test	Failure to Investigate
Los Angeles	2004	Attempted Murder	No	In re Guan 2004 WL 49717 [not published]	State Habeas	2002	Private	1996	6	None	xx		1) Failure to Investigate 2) Failure to advise D to accept plea bargain	1) Failure to Investigate 2) Guilty Plea Advice
Los Angeles	2004	Possession of a Controlled Substance as a third strike	No	Banyard v. Duncan 342 F.Supp.2d 865 (2004)	Federal Habeas	1997	Assigned Counsel				xx		1) Trial counsel failed to investigate whether prior assault conviction counted as a "strike" 2) Appellate counsel failed to raise trial counsel's IAC on appeal	Failure to Investigate by both trial and appellate counse
Los Angeles	2005	Robbery - Second degree	No	Aguirre v. Alameda 120 Fed. Appx. 721 [not published]	Federal Habeas	2003	Public Defender	not available			x		Failure to investigate Post Traumatic Stress Disorder (PTSD) relevant to self defense claim.	1) Failure to Investigate: defense 2) Failure to raise mental health issue - other
Los Angeles	2005	Murder	No	Edwards v. Lamarque 439 F. 3d. 504 (2005)	Federal Habeas	1999	Public Defender	1969	30	None	x		Counsel elicited testimony from D that waived his marital privilege and allowed D's wife to testify that D made admissions to her.	Lack Knowledge of Law: evidence

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Los Angeles	2005	Felony Murder	No	Villegas v. Yearwood 131 Fed. Appx. 93 [not published]	Federal Habeas	1995	Private	1979	16	1998: Suspended one year for mishandling client funds.	x		Counsel was unaware defendant would receive mandatory life sentence without parole if convicted and did not advise defendant of this fact when defendant chose to reject offer of 15 to life.	1) Plea Advice: other 2) Lack of Knowledge of Law: criminal law
Los Angeles	2005	Murder	No	In re Rocha 135 Cal.App.4th 252 (2005)	State Habeas	1998	Private				x		Failure to conduct reasonable investigation and follow-up w/ witnesses	Failure to Investigate
Los Angeles	2005	Assault	No	People v. Coley 2005 WL 2519522 [not published]	Direct Appeal	2004	unknown				x		Failure to object to improper sentence	Sentencing Error
Los Angeles	2005	Robbery	No	People v. Townsend 2005 WL 665572 [not published]	Direct Appeal	2004	unknown				xx		Failure to and object to prosecutor's improper use of hearsay evidence and seek limiting instructor	Lack of Trial Skills
Los Angeles	2006	Murder	No	Mirzayance v Knowles 175 Fed. Appx. 142 [not published]	Federal Habeas	1997	Private	1963	34	None	x		Failure to present insanity defense	Failure to raise mental health issue
Los Angeles	2006	Murder - First Degree	Yes	Frierson v. Woodford 463 F.3d 982 (2006)	Federal Habeas	1979	Public Defender	1968	11	None	xx		1) Failure to investigate and present mitigating evidence of organic brain damage at the sentencing phase 2) Failure to object to defense witness's invocation in court of his 5th Amendment right against self-incrimination where investigation would have shown witness had been acquitted of the murder to which he confessed privately to defense counsel	1) Failure to Investigate: Sentencing: Death Penalty Mitigation 2) Failure to raise mental health issue 3) Failure to Investigate: Other
Los Angeles	2006	Murder - First Degree	No	Reynoso v. Giurbino 462 F.3d 1099 (2006)	Federal Habeas	2000	Public Defender	1989	11	None	x		Failure to interview prosecution eyewitnesses and discover each had been paid a \$7,500 reward for their testimony.	Failure to Investigate
Los Angeles	2007	Sexual Assault	No	In re Chen 2007 WL 1829373 [not published]	State Habeas	1998	unknown				x		Failure to interview and call favorable witnesses for defendant	Failure to Investigate
Los Angeles	2007	Murder - Second Degree	No	In re Walker 147 Cal.App.4th 533 (2007)	State Habeas	1991	unknown				x		Failure of trial counsel to introduce expert testimony regarding intimate partner battering and its effects	Failure to call expert
Los Angeles County	2002	Murder - Second degree	No	People v. Robinson 2002 WL 973244 [not published]	Direct Appeal	2000	Public Defender	1985	15	None		x	Failure to submit complete jury instructions on self-defense	Lack of Knowledge of Law: criminal law
Madera	2002	Termination of Parental Rights	No	In re Aaron A. 2002 WL 31832565 [not published]	Direct Appeal	2001	unknown				xx		1) Failure to object to insufficiency of petition to terminate parental rights 2) Failure to meet with parent/mother who was mentally ill or seek appointment of guardian ad litem for her.	1) Lack of knowledge of law 2) Negligence
Madera	2004	Possession of methamphetamine	No	People v. Costa 2004 WL 1813618 [not published]	Direct Appeal	2002	Public Defender (alternate)				x		Failure to renew a motion to suppress illegally obtained evidence in trial court	1) Lack of knowledge of law 2) Failure to suppress inadmissible evidence
Mendocino	2002	Robbery	No	People v. Somersall 2002 WL 1924030 [not published]	Direct Appeal	2000	Private	1972	28		xx		1) Failure to object to jury instruction which required only general intent for enhancement. 2) Failure of appellate counsel to raise voluntary intoxication as a defense to aiding and abetting	Lack of knowledge of law

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Merced	1996	Murder - First degree	Yes	In re Jones 13 Cal.4th 552 (1996)	State Habeas	1982	Private	1949	33	No record: deceased	xxx		1) Counsel conducted only perfunctory investigation without hiring licensed investigator and failed to discover favorable witness 2) Inept cross-examination 3) Multiple failures to object to inadmissible and irrelevant prejudicial evidence	1) Failure to Investigate: defense 2) Lack of Trial Skills: cross examination 3) Lack of Knowledge of Law: evidence
Monterey	2002	Misdemeanor Battery	No	People v. Legaspi 2002 WL 31875989 [not published]	Direct Appeal	2001	Public Defender	1983	18	Suspended 1986: failure to pay bar dues	x		Failure to object to probation condition that D not associate with people who used or sold drugs regardless of whether D knew persons were users or sellers	Other Sentencing Error
Monterey	2002	Lewd acts on a child under 14	No	People v. Guerrero 2002 WL 323542 [not published]	Direct Appeal	1999	Public Defender	1979	20	None	x		Failure to object to child molester profile testimony by prosecution expert	Lack of Knowledge of Law: evidence
Monterey	2006	Conspiracy to transport drugs	No	In re Jasso 142 Cal.App.4th 1225 (2006)	State Habeas	2002	Private	1973	29		x		Failure to object to defendant's presence in prison garb and shackles in trial	Other: Failure to Object
Orange	1996	Murder	Yes	In re Viscotti 14 Cal. 4th 325 (1996)	State Habeas	1982	Private	1973	9	1985: convicted of criminal contempt; 1990: suspended 2 yrs; 1991: suspended additional year based on 8 complaints for misrepresentation and failure to perform services 1994 Resigned with charges pending 2001 Reinstated		x	Although on notice of brutal family history, counsel failed to investigate school and juvenile records and present available mitigation evidence of physical and psychological abuse by parents	Failure to Investigate: Sentencing: death penalty mitigation
Orange	1997	Murder	Yes	Thompson v. Calderon 120 F.3d 1045 (1997)	Federal Habeas	1987	unknown	1971	16	None	xx		1) Failure to investigate and present forensic evidence rebutting State's forensic evidence of rape 2) Failure to investigate and discover evidence impeaching two jailhouse informants	1) Failure to Investigate: impeachment 2) Failure to Investigate: impeachment
Orange	2002	Armed Robbery	No	People v. Ortega & Torres 2002 WL 99523 [not published]	Direct Appeal	2000	Private					x	Judge, Prosecutor and Defense Counsel all miscalculated mandatory minimum defendant should receive on a plea offer involving robbery with gun use enhancement. As a result defendant claimed he was misled into rejecting offer. He later received a higher sentence after conviction at trial.	Plea Advice: other
Orange	2003	Possession of controlled substances for sale	No	Ippolito v. Superior Ct. 2003 WL1711968 [not published]	Writ of Mandate	2003	Private	1983	20	None	x		Counsel, who is certified defense specialist, filed two separate motions violating procedural rule that all suppression issues under §1538.5 must be brought in one motion	1) Lack of Knowledge of Law: procedure 2) Failure to suppress inadmissible evidence

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Orange	2003	Murder - First Degree	Yes	Alcala v. Woodford 334 F.3d 862 (2003)	Federal Habeas	Public Defender	not available			xxxx		1) Failure to support alibi defense with additional witness and business records which established time defendant was present. 2) Deficient preparation of defense witness for cross-examination, whose credibility was seriously damaged by evasive answers and prior inconsistent statements. 3) Failure to investigate scene and call expert to impeach prosecution witness.	1) Failure to call witness 2) Lack of Trial Skills: failure to prepare witness 3) Failure to Investigate: impeachment 4) Failure to present forensic evidence
Orange	2003	Murder	Yes	Douglas v. Woodford 316 F.3d 1079 (2003)	Federal Habeas	Public Defender	1971	14	None	x	x	1) Although case file from defendant's prior conviction contained court order directing psychological testing, counsel failed to investigate mental illness of defendant and present mitigation during penalty phase. 2) Failure to investigate and develop a mental health defense at the guilt phase (not prejudicial)	1) Failure to Investigate: Sentencing: death penalty mitigation 2) Failure to investigate: defense 3) Failure to raise mental health issue
Orange	2004	Transportation of Heroin	No	People v. Palomino 2004 WL 1689795 [not published]	Direct Appeal	unknown	2002			x		Failure to object to judge's failure to state reasons for imposing maximum term	1) Lack of knowledge of law 2) Sentencing Error
Orange	2006	Probation Revocation	No	People v. Gayton 137 Cal.App.4th 96 (2006)	State Habeas	Public Defender	1994	10	None	xx		1) Failure to examine client's probation report 2) Failure to introduce probation report to impeach false testimony of probation officer	Failure to Investigate: impeachment
Orange	2006	Murder - Second Degree	No	People v. Enciso 2006 WL 3004204 [not published]	Direct Appeal	unknown	2005				x	Failure to object to Prosecutor's misstatements of criminal law in closing argument	Other: Failure to Object
Placer	2006	Kidnapping	No	Chappel v. Garcia 2006 WL 1748424 [not published]	Federal Habeas	Private	1999			xx		1) Failure to object to identification of defendant made without counsel present 2) Failure to move to suppress suggestive pre-trial identification.	Lack Knowledge of Law
Placer (tried in San Mateo)	2006	Murder - First Degree (2 counts)	Yes	Mickey v. Ayers 2006 WL 3358410 [not published]	Federal Habeas	Atty 1 - Assigned Counsel Atty 2 - Assigned Counsel	1983	Atty 1: 1959; Atty 2: 1949	Atty 1: 24 Atty 2: 34	xx		1) Failure to discover and present evidence the D's disturbed background and mental condition 2) Failure to effectively utilize the expertise of their mental health experts to strengthen the defense and rebut prosecution	1) Failure to Investigate 2) Failure to Raise Mental Health Issue
Plumas	2004	Murder - First degree	No	Orner v. Farmon 116 F. Appx. 844 (2004) (not published)	Federal Habeas	Private	1990	7	Inactive on 2/1/07	x		After jury hung in murder trial of wife, where defense played videotaped statement of dying husband stating his wife did not shoot him, counsel agreed, without conducting any investigation, not to use videotape in retrial in exchange for the prosecutor's promise not to use a new witness who claimed husband had declared "the bitch shot me." The new witness was unreliable and subject to impeachment	Failure to investigate: impeachment
Riverside	1997	Murder	Yes	Farmer v Ratelle 1997 WL 730314 [not published]	Federal Habeas	Private	1971	11	None	x		Failure to present evidence that another man, after being acquitted of the murder, then confessed that he had been the actual killer	1) Failure to call witness 2) Failure to conduct investigation properly.

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Riverside	2003	Murder with Special Circumstances	Yes	People v. Jones 30 Cal. 4th 1084	Direct Appeal	1991	Assigned Counsel	1978	13	None		x	Failure to find person defendant claimed was real shooter	Failure to Investigate: defense
Riverside	2004	Murder	Yes	Daniels v. Woodford 428 F. 3d. 1181 (2004)	Federal Habeas	1984	Assigned Counsel	1965	19	Inactive on 1/1/06	x		Failure to investigate mitigating evidence of mental illness.	1) Failure to Investigate: Sentencing: death penalty mitigation 2) Failure to raise mental health issue
Sacramento	1998	Murder	Yes	Bean v. Calderon 163 F.3d. 1073(1998)	Federal Habeas	1981	Assigned Counsel	1956	25	No record: deceased	x		Failure to investigate childhood abuse and adequately present evidence of mental retardation	1) Failure to Investigate: Sentencing: death penalty mitigation 2) Failure to raise mental health issue
Sacramento	2002	Murder - Second degree	No	Rios v. Rocha 299 F.3d. 796	Federal Habeas	1987	Assigned Counsel	1974	13	None	x		Failure to investigate and interview witnesses who would have supported a misidentification defense	Failure to Investigate: defense
Sacramento	2002	Murder - Second degree	No	Manzano v. Kramer 42 Fed.Appx. 11(2002)	Federal Habeas	1996	Private					x	Failure in murder prosecution to object to DA's additional charge of felon-in-possession of a weapon	Lack of knowledge of law
Sacramento	2003	Triple murder	Yes	Allen v. Woodford 395 F.3d 979	Federal Habeas	2001	Private	1973	28			x	Failure to investigate and present death penalty mitigation; held deficient but not prejudicial due to "overwhelming evidence in aggravation."	Failure to Investigate: sentencing: death penalty mitigation
Sacramento	2003	Transportation of cocaine into county jail	No	People v. Maxwell 2003 WL 21040585 [not published]	Direct Appeal	2001	unknown				x		Failure to object to the post verdict amendment adding a 3 year enhancement	Other Sentencing Error
Sacramento	2004	Possession of meth base w/ intent to produce meth	No	People v. Yang 2004 WL 2677084 [not published]	Direct Appeal	2003	Public Defender	1981	22	None	x		Failure to investigate officer's mistake of law regarding out of state front licence plate requirement and file 4th Amendment suppression motion	1) Failure to Investigate 2) Failure to suppress inadmissible evidence
San Bernardino	1996	Rape	No	Baylor v. Estelle 94 F.3d. 1321(1996)	Federal Habeas	1989	Assigned Counsel	1978	11	Inactive 1988-1993 and from 1998 to present.	x		Failure to subpoena Sheriff's Crime Laboratory criminalist who conducted test favorable to defendant. Rapist was secretor; defendant was not.	Failure to present forensic evidence
San Bernardino	2004	Burglary - Second degree	No	Bowen v. Giurbino 305 F. Supp. 2d. 1131 (2004)	Federal Habeas	2000	Private	1987	13	Suspended and not eligible to practice law in 1983 and 1999 for failure to pay bar fees; not eligible to practice law in 2001 for MCLE noncompliance; inactive as of 2/1/07.	x		Failure to object to prosecutor's improper closing argument which referred to defendant's prior convictions	1) Lack of Knowledge of Law: evidence 2) Lack Trial Skills: failure to object: closing argument

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IAC Cases where Deficient Performance Found<sup>1</sup>

County	date IAC case decided	Most serious crime	Death Penalty?	Case name and Citation	Year of Conviction	Type of Trial Defense Attorney <sup>2</sup>	Year Admitted to Bar	# yrs. atty. admitted to Bar upon conviction	Disciplinary Proceedings	Deficient Performance AND Prejudicial	Deficient Performance BUT No Prejudice	Description of IAC claim	IAC classification
San Bernardino (change of venue from Lassen County)	2002	Murder - First degree, robbery, and kidnapping	Yes	Silva v. Woodford 279 F.3d 825 (2002)	1982	Federal Habeas	Assigned Counsel			x	x	Failure to discover evidence relating to defendant's childhood, mental illness, organic brain disorder and substance abuse which would have constituted substantial mitigation during the penalty phase	Failure to Investigate
San Diego	2002	Battery w/ serious bodily injury	No	People v. Weisman 2002 WL 225945 [not published]	2000	Direct Appeal	Private	not available			x	Failure to exclude character evidence presented during videotaped interview of victim allowed into evidence by counsel	Lack of Knowledge of Law: evidence
San Diego	2004	Receiving a stolen vehicle	No	In re Anthony J. 117 Cal. App. 4th 718 (2004)	2002	State Habeas	unknown			x		Failure to file appeal from judgment	Failure to file notice of appeal
San Diego	2005	Murder - Second degree	No	Tran v. Lamarque 172 Fed.Appx.722 [not published]	1999	Federal Habeas	Private	1970	29	None	x	Failure to object to or seek a limiting instruction regarding the admission of taped police interrogations which contained hearsay, speculation and personal opinions of the officers	Lack of Knowledge of Law: evidence
San Diego	2005	Attempted Murder (4 counts)	No	In re Owens 2005 WL 2160209 [not published]	2004	State Habeas	Public Defender (alternate)	1990	14	None	x	Failure to investigate defendant's mental retardation and move to suppress statement based on invalid Miranda waiver	1) Failure to Investigate 2) Failure to raise mental health issue 3) Failure to suppress inadmissible evidence
San Diego	2006	Attempted Murder	No	People v. Anzalone 141 Cal. App. 4th 380 (2006)	2004	Direct Appeal	Public Defender	1994	10	None	x	Failure to object to prosecutor's misstatement of law (concurrent intent)	Lack of knowledge of Law: criminal law
San Diego	2006	Murder- First Degree	No	In Re Noun 52 Cal Rptr 3d 31(2006)	2003	State Habeas	Private	1984	19	None	x	Failure to conduct investigation or apply for expert assistance in developing Battered Woman's Syndrome defense for Cambodian refugee known to be in an abusive relationship with actual killer	Failure to Investigate: defense
San Diego	2007	Corporal Injury to a Spouse	No	In re Prescott, 149 Cal.App.4th 243 (2007)	2004	State Habeas	Assigned Counsel	1970	34	None	x	Appointed to represent client re withdrawal of guilty plea, counsel revealed confidential communications from client to court and prosecution to justify his decision not to file motion to withdraw plea.	Lack of knowledge of law
San Francisco	1998	Murder - First degree	Yes	Coleman v. Calderon 150 F.3d 1105 (1998)	1981	Federal Habeas	Public Defender	1970	11	None	x	Failure to introduce evidence that hair found on victim's hand was inconsistent with defendant's hair. Supplemental report from crime lab never read by counsel although allegedly given to someone in his office.	Failure to Investigate: other
San Francisco	2003	Murder - Second degree	No	Nunes v. Miller 350 F.3d 1045	1993	Federal Habeas	unknown	1984	9	Suspended on 9/27/99 for failure to pay Bar member fees. Ordered inactive on 1/11/98. Disciplined with actual suspension on 9/19/98. Interim suspension after conviction on 9/25/98. Disbarred on 8/8/01.	x	Failure to fully communicate terms of manslaughter plea offer. D convicted of murder at trial.	Plea advice:other
San Francisco	2004	Robbery and Attempted Car Jacking	No	Jones v. Calderon 2004 WL 2625083 [not published]	1994	Federal Habeas	Public Defender	1986	8	None	x	Failure to investigate defendant's prior conviction before advising him to reject a 7 year plea offer. D had one prior conviction based on two counts of burglary (which counted as two prior strikes). Convicted at trial, D was sentenced under 3 strikes to 30 years to life.	Failure to Investigate: other

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San Francisco	2006	Murder - First degree	Yes	In re Thomas 39 Cal. Rptr. 3d 845 (2006)	Federal Habeas	1986	Public Defender	1967	19	Inactive - 1992		x	Failure to investigate to find supporting witnesses which would have corroborated testimony of single defense witness that third party was killer	Failure to investigate: defense
San Joaquin	2002	Robbery	No	People v. Franklin 2002 WL 1859137 [not published]	Direct Appeal	2001	Public Defender	1979	22	None		x	Trial counsel's motion to strike a prior was based upon an erroneous understanding of the law	Lack of Knowledge of Law: procedure
San Mateo	2003	Robbery	No	Banks v. Muller 2003 WL 1798298 [not published]	Federal Habeas	1997	Assigned Counsel	1965	32	None	x		After successful appeal defendant was resentenced on remand and after specifically being instructed to do so, counsel failed to file notice of appeal concerning new sentence	Failure to file notice of appeal
San Mateo	2004	Murder - First degree	Yes	Beardslee v. Woodford 358 F.3d 560( 2004)	Federal Habeas	1989	Assigned Counsel	1966	23	1995: public reproof		x	Failure to conduct mitigation investigation into defendant's background and mental state before deciding on strategy which relied upon defendant's cooperation in admitting to other crimes	Failure to Investigate: Sentencing: death penalty mitigation
San Mateo	2007	Robbery	No	Cobbs v. McGraff 2007 WL 801053 [not published]	Federal Habeas	1999	Assigned Counsel	1973	26	None	x		Failure to investigate defendant's history of mental illness before advising nolo contendere plea	1) Failure to Investigate 2) Failure to raise mental health issue
Santa Clara	2002	Possession of methamphetamine	No	People v. Avilla 2002 WL 1897473 [not published]	Direct Appeal	2001	Public Defender	1997	4	None	x		Failure to object to Court's imposition of consecutive sentences w/o stating reasons.	Other Sentencing Error
Santa Clara	2002	Felon in possession of firearm	No	People v. Valencia 2002 WL 220936 [not published]	Direct Appeal & State Habeas	2000	Private	1994	6	1998: private reproof for failing to provide competent legal services 2000: probation: failed to take MPRE as ordered	xx		1) Advised defendant to plead to two counts when conviction on only one count could have been obtained after trial. 2) Failure to investigate prior conviction and advised defendant to plead to enhancement when record of conviction would not have been sufficient to prove enhancement.	1) Plea Advise: other 2) Lack of Knowledge of Law: criminal law 3) Failure to Investigate: defense
Santa Clara	2002	Burglary of a vehicle	No	People v. Deleon 2002 WL 1038834 [not published]	Direct Appeal	2000	Public Defender	1983	17	11/19/1993 Discipline, probation; no actual susp. Case #92-C-18458	x		Failure to object to trial court's manner of calculating the restitution fine	Other Sentencing Error
Santa Clara	2002	Making criminal threats	No	People v. Bustos 2002 WL 31875987 [not published]	State Habeas	1998	Public Defender	1993	5	Inactive on 9/14/00, but is now active		x	Failure to advise D of the immigration consequences of his guilty plea	Plea advise:immigration
Santa Clara	2002	Murder	Yes	Caro v. Woodford 280 F.3d 1247 (2002)	Federal Habeas	1981	unknown				x		Failure to investigate and present mitigating evidence concerning childhood abuse and exposure to toxic chemicals which caused brain damage.	1) Failure to Investigate: Sentencing: death penalty mitigation 2) Failure to raise mental health issue
Santa Clara	2003	Robbery	No	People v. Gazzi 2003 WL 42546 [not published]	Direct Appeal & State Habeas	2001	Public Defender	not available			xxx		1) Failure to subpoena business records which would have supported wife's alibi testimony. 2) Failure to call expert 3) Failure to interview witness who could impeach officer's testimony.	1) Failure to Investigate: defense 2) Failure to call expert 3) Failure to Investigate: impeachment
Santa Clara	2004	Grand Theft	No	People v. Cruz 2004 WL 1080175 [not published]	Direct Appeal	2003	Assigned Counsel				x		Failure to advocate on behalf of defendant at sentencing stage	Sentencing Error
Santa Clara	2004	Possession of meth w/ intent to distribute	No	People v. Sanchez-Martinez 2004 WL 693225 [not published]	Direct Appeal	2003	Private	1976	27	Disciplinary action without actual suspension 2/1990: Not eligible to practice law: 2/1990-5/1990	x		1) Failure to advise D of immigration consequences of his plea and seek to mitigate those consequences, and 2) Failure to recognize defendant had a mistake of fact defense to the crime charged	1) Guilty plea advice 2) Lack of knowledge of law
Santa Clara	2004	Possession of marijuana w/ intent to sell	No	People v. Bautists 115 Cal.App.4th 229 (2004)	State Habeas	2002	unknown	1970	32	None	x		Failure to advise D of immigration consequences of his plea	Guilty plea advice

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Santa Clara	2004	Armed Robbery	No	Bedolla Garcia v. Runnels 2004 WL 1465696 [not published]	Federal Habeas	1999	Private	1989	10	None	x		Failure to give accurate advice on maximum sentence possible if convicted at trial	1) Guilty plea advice 2) Lack of knowledge of law
Santa Clara	2005	Resisting performance of executive officer's duties	No	People v. Lopez 129 Cal.App.4th 1508 (2005)	Direct Appeal	2003	Public Defender	1997	6	None	xx		1) Failure to object to improper impeachment of defense witnesses with evidence of mere arrests and misdemeanor conduct not amounting to moral turpitude. 2) Failure to object to prosecutor's closing argument which portrayed defendant's profanity prefaced invocation of his right to counsel as an admission of guilt.	1) Law of Knowledge of Law: evidence 2) Lack of Trial Skills: Failure to object to prosecutor's closing argument.
Santa Clara	2006	Poss. of cocaine	No	People v. Thimmes 138 Cal. App. 4th 1207 (2006)	Direct Appeal	2005	unknown	1979	26	None	x		Failure to investigate record of prior conviction which would have disclosed that defendant had not been warned of three strikes consequences if he committed another felony.	Failure to Investigate: sentencing: other
Santa Clara	2006	Carrying a concealed dagger	No	Cordova v. Terhune 164 Fed.Appx.609 [not published]	Federal Habeas	1996	Private	1971	25	None	x		Alleged that counsel affirmatively misled defendant into believing plea offer "would always be there." Offer was later withdrawn.	Plea Advice: other
Santa Clara	2006	Robbery and Burglary	No	People v. Le 136 Cal.App.4th 925 (2006)	Direct Appeal	2005	unknown				x		Failure to object to illegal multiple punishments	Sentencing Error
Santa Clara	2006	Robbery	No	Hutchinson v. Hamlet 2006 WL 1749539 [not published]	State Habeas	2000	Private	1989	11	None	x		Failure to investigate crime scene, interview witnesses, and employ photogrammetry expert to establish defendant was not same height as robber shown on store videotape	1) Failure to Investigate 2) Failure to call expert
Santa Clara	2007	Child Endangerment	No	Pakes v. Yates 2007 WL 1655574 [not published]	Federal Habeas	2003	unknown	1981	22	Public reproof in July 2006 for incompetence in unrelated civil matter.	x		Counsel failed to inform defendant of valid defenses to crime to which he pled guilty	1) Guilty plea advice 2) Lack of knowledge of law
Shasta	2003	Conspiracy to cultivate marijuana	No	People v. Hall 2003 WL 1908056 [not published]	Direct Appeal	2000	Private				x		Failure to object to jury instruction that precluded mistake of fact as a defense to conspiracy	Lack of knowledge of law
Solano	2003	Unlawful taking of a vehicle	No	People v. Jansen 2003 WL 1562613 [not published]	Direct Appeal	2001	Public Defender	1975	26	None	x		Failure to timely disclose to prosecution a list of trial witnesses and statements resulted in adverse jury instruction and prosecutor being permitted to make adverse comments about witnesses in closing argument.	Other
Sonoma	2003	Possession of ammunition by felon	No	People v. Dempsey 2003 WL 22971261 [not published]	Direct Appeal	2002	Public Defender	1977	25	None	x		After dismissal following successful motion to suppress, prosecution refiled charges and counsel failed to object to having different judge hear renewed motion to suppress	Lack of knowledge of law
Tulare	2002	Receiving stolen property	No	People v. Marshall 2002 WL 382854 [not published]	Direct Appeal	1998	Private	1972	26	Several disciplinary actions Disbarred 2005	x		In "egregious behavior" counsel pursued a nonviable defense of entrapment and sabotaged the defendant's defense by portraying defendant as a liar when he testified he was factually innocent.	1) Lack of Knowledge of Law: criminal law 2) Lack of Trial Skills: closing argument
Ventura	2000	Assault w/ intent to rape	No	People v. Andrade 79 Cal. App. 4th 651 (2000)	Motion for new trial	1999	Private	1991	8	None	xxx		1) Failure to interview character witnesses 2) Failure to properly impeach complaining witnesses because he was unfamiliar with their statements. 3) Failure to allow defendant to testify	1) Failure to Investigate: defense 2) Lack of Trial Skills: failure to cross-examine 3) Failure to call witness
Ventura	2004	Felony Murder - First degree	No	People v. Callahan 124 Cal. App. 4th 198 (2004)	Direct Appeal	2003	Private	1980	23	None	xx		1) Failure to impeach prosecution witnesses 2) Failure to call Defendant to testify	1) Lack of Trial Skills: failure to cross examine 2) Failure to call witness

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Yuba	2002	Possession of Marijuana	No	People v. Plue 2002 WL 462724 [not published]	Direct Appeal	2001	Public Defender				x		Failure to preserve issue of legality of search for appellate review	1) Lack of Knowledge of Law 2) Failure to suppress inadmissible evidence