

**MISSISSIPPI
PUBLIC DEFENDERS
TASK FORCE**



REPORT TO THE MISSISSIPPI LEGISLATURE

DECEMBER 3, 2004

**MISSISSIPPI PUBLIC DEFENDERS TASK FORCE
REPORT TO THE MISSISSIPPI STATE LEGISLATURE
December 3, 2004**

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**Letter
from the
Chairman of the
Mississippi Public Defenders Task Force**



SUPREME COURT OF MISSISSIPPI
JACKSON, MISSISSIPPI

WILLIAM L. WALLER, JR.
PRESIDING JUSTICE

December 3, 2004

The Honorable Amy Tuck
Distinguished Members of the Senate
The Honorable Billy McCoy
Distinguished Members of the House
New Capitol
Jackson, Mississippi 39201

Mesdames and Messieurs:

The Public Defenders Task Force has diligently and thoughtfully considered the legislative mandate which included: (1) needs - study for indigent counsel; (2) types and costs of other states' public defender systems; and (3) the relationship between the circuit bench and the appointment of public defenders. We trust that the enclosed report makes a detailed and comprehensive response to your concerns.¹

RECOMMENDATIONS

One implied mission of the Task Force is to make recommendations for the improvement of our indigent defense system in criminal proceedings. Reform of our present system is needed. The passage of House Bill 1228 (creating the Office of Capital Defense Counsel and the Office of Capital Post-Conviction Relief and authorizing this study) was an important step in reforming our indigent defense system. Legislation is now needed to move to the next level of reform by creating the Office of Indigent Appeals, authorizing administrative support for the Public Defenders Task Force and changing the method of financing indigent defense from State appropriations to special funds generated from assessments on criminal cases.

¹The opinions expressed in this transmittal letter are that of the author and not of the individual task force members.

1. The Office of Indigent Appeals

The next logical step would be the creation of an Office of Indigent Appeals. A streamlined office of an attorney/director and five staff attorneys would be able to handle the bulk of indigent non-capital criminal appeals in the State. This office would provide both an efficient and timely way to address a significant part of the criminal process. At the local level, overburdened attorneys would be relieved of filing appeals, allowing them to give priority to trials. Appeals would also be processed more expeditiously because they would be prepared by attorneys with expertise in this field and by using economies of scale.

2. Administrative Assistant to the Public Defender Task Force

At its creation, the Task Force was charged to "make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel, examining existing public defender programs," and to report to the Legislature each year at least one (1) month before the convening of the regular session. Miss. Code Ann. §25-32-71. In spite of the excellent assistance of the Administrative Office of Courts, the Task Force has been able to collect only partial and incomplete data from the counties.

The Task Force's studies to date make it clear that a single system of providing indigent defense is not desirable, but rather that individualized systems should be used to meet the needs of districts in various locations and of various sizes. In order to gather the detailed data and to provide further study, the Task Force is seeking a single, legally trained administrative assistant/attorney and secretary/clerical aid. The administrative assistant would conduct on-site interviews with the circuit judges and the circuit clerks and develop models to be used by the Task Force in its effort to produce proposals supporting individualized support of the indigent defense obligations of each district.

3. Funding for Indigent Defense

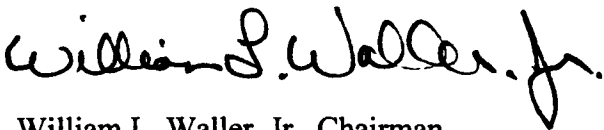
Task Force members agree that the costs of indigent defense presently funded with appropriated funds should be shifted to an alternate funding source. Indigent defense can be funded by assessments on traffic tickets and other misdemeanor and felony cases. Each \$1 assessment will generate approximately \$700,000 in revenue. For a few dollars of increased assessments, funding requirements for all public defender agencies such as the Offices of Capital Defense and Capital Post-Conviction Relief can be fully funded.

The Honorable Amy Tuck, et al.
December 3, 2004
Page Three

CONCLUSION

On behalf of all members of the task force, we appreciate the opportunity to serve with the hope that our legal system will be improved.

Sincerely,

A handwritten signature in black ink that reads "William L. Waller, Jr." with a stylized flourish at the end.

William L. Waller, Jr., Chairman
Public Defender Task Force

cc: Governor Haley Barbour

WLW/mm

Enclosure

MISSISSIPPI PUBLIC DEFENDER TASK FORCE
OUTLINE SUMMARY OF LEGISLATIVE PROPOSAL

1. Creation of Office of Indigent Appeals

Staff:

Director/attorney
Five staff attorneys
Two clerical/paralegal assistants
One financial assistant

Funding needed: \$1,156,436.00

2. Provisions for staffing of Mississippi Public Defender Task Force

Options for Staffing:

A. State employees located with the Administrative Office of Courts (sunset repealer of two years)

Staff:

One administrative assistant/attorney
One clerical assistant

Funding needed: \$156,839.00

B. Consulting Contract

Contract awarded by the Administrative Office of Courts based on competitive work proposals.

Suggested consulting contract funding: \$100,000.00

3. Funding achieved through assessments on criminal fines. (\$1 assessment per case expected to generate approximately \$ 700,000.00.) A two dollar assessment could fund both of these legislative proposals.

MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Miss. Code Ann. § 25-32-71

There is created the Mississippi Public Defender Task Force which shall be composed of eleven (11) members as follows:

- The President of the Mississippi Public Defender Association, or his designee;
- The President of the Mississippi Prosecutors Association, or his designee;
- A representative of the Administrative Office of Courts;
- A representative of the Mississippi Supreme Court;
- A representative of the Conference of Circuit Judges;
- A representative of the Mississippi Attorney General's Office;
- A representative of the Mississippi Association of Supervisors;
- The Chairman of the Senate Judiciary Committee, or his designee;
- The Chairman of the Senate Appropriations Committee, or his designee;
- The Chairman of the House Judiciary En Banc Committee, or his designee;
- The Chairman of the House Appropriations Committee, or his designee.

The Task Force was charged to make a needs-study of the circuit court districts for state-funded indigent defense counsel, examine existing public defender systems, and provide this report to the Legislature by December 3, 2004. The Task Force also looked at the types of approaches taken by other states, and studied the relationship between the circuit bench and the appointment of public defenders.

Membership of the Task Force

Mississippi Public Defender Task Force Membership

Chairman

Presiding Justice William L. Waller, Jr.
Mississippi Supreme Court
P.O. Box 117
Jackson, MS 39205
Phone: (601) 359-2139
Fax: (601)359-2443

Vice-Chairman

Judge William Chapman, III
Conference of Circuit Judges
P.O. Box 1626
Canton, MS 39046
Phone: (601) 855-5555
Fax: (601) 855-5704

Senator Carl "Jack" Gordon, Jr.
Chairman Senate Appropriations Committee
P.O. Box 1018 (Capitol)
Jackson, MS 39215-1018
Phone: (601) 359-3250
Fax: (601) 359-5110
Phone: (662) 447-3117

Senator Charlie Ross
Senate Judiciary Committee
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Jackson, MS 39215
P.O. Box 651 (Office)
Jackson, MS 39205
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Representative Edward Blackmon, Jr.
House Judiciary En Banc Committee
P.O. Box 1018 (Capitol)
Jackson, MS 39215-1018
P. O. Drawer 105 (Office)
Canton, MS 39046
Phone: (601) 859-1567 (office)
(601) 859-4202 (home)
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(601) 359-3879 (Capitol)

Representative Johnny W. Stringer
Chairman House Appropriations Committee
P. O. Box 1018 (Capitol)
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Marvin L. "Sonny" White
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T.H. "Butch" Scipper
MS Association of Supervisors
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Data Collection Activities

**MISSISSIPPI PUBLIC DEFENDER TASK FORCE
REPORT TO THE MISSISSIPPI LEGISLATURE
December 3, 2004**

Data Collection Activities

In regards to actions taken to collect data, the Administrative Office of Courts mailed a copy of the survey, included as Attachment "D", to Senior Circuit Judges, Chancery Clerks, and County Comptrollers. Three weeks after the mailing, reminder letters were sent to Senior Circuit Judges. The survey requested information on costs of indigent defense and the percentage of felony defendants who were indigent and needed representation.

A compilation of the survey results may be found in Attachment "E" of this report. The return rate was 42 percent (35 counties). If there is a blank out from the county name, no survey was returned.

Based upon information gathered from the survey, it is apparent that indigent defense remains a vexing problem for the counties. Many counties are not sure about proper amounts to budget for these expenses. From the information gathered, it can be seen that the 35 counties are spending approximately \$3.9 million per year on felony, non-capital indigent defense.

**Proposed Recommendations for the 2005
Legislative Session**

MISSISSIPPI PUBLIC DEFENDER TASK FORCE

MEMORANDUM OF PROPOSED LEGISLATION FOR PUBLIC DEFENSE ACTIVITIES IN MISSISSIPPI

The Mississippi Public Defender Task Force offers two legislative proposals to the Mississippi Legislature for the forthcoming session. The first is the creation and funding of an Office of Indigent Appeals, and the second is for the creation and funding of a position of administrative assistant to the Task Force.

I. OFFICE OF INDIGENT APPEALS

The following is an outline of proposed legislation which would create an Office of Indigent Appeals, resulting in significant cost savings to the state and to the counties, and provided improved representation and reduction in appellate delays in non-capital criminal appeals. The new office would represent indigent persons in the appeal of non-capital felony convictions. The office parallels the Criminal Division of the Attorney General's office, and would be similarly staffed.

The Task Force submitted to the 2001 session of the Mississippi Legislature a broader proposal which would have created an administrative umbrella office of State Public Defender, with the existing Office of Capital Defense Counsel re-designated as a division of the State Public Defender's Office and a separate Division of Indigent Appeals created to provide representation in non-capital cases. Recognizing the financial strains presently faced by the state, the present proposal does not include the State Public Defender's office, and results in substantially less cost.

Funding for an Office of Indigent Appeals is, of course, dependent on the volume of criminal appeals and the proportions of those with appointed and private counsel. At the current rate of filings, it is projected that in 2005 approximately 370 non-capital felony appeals will be filed. If it is assumed that ten per cent of these cases have privately employed counsel, the number for an Office of Indigent Appeals would be reduced to 333 appeals. Perhaps 30 of these would be handled by contract counsel due to conflict or other circumstances. If so, the number of appeals handled by the office, in house, would be 303 each year, or, assuming six attorneys in the office, 50 per attorney. This does not include motions for rehearing, petitions for certiorari and other related matters.

Legislative Outline for Office of Indigent Appeals

Appointing authority:

The Director would be appointed by the Governor, and employees of the office

would be appointed by the director. The director would serve for four years, and the employees would serve at his or her will and pleasure.

Duties:

The office would provide representation on appeal for all persons convicted of felonies but not under sentences of death. Representation would be provided by staff attorneys, or, in the case of conflict or excessive work load, by attorneys selected and employed by the office on a contract basis.

Additionally, the office would provide advice, education and support to attorneys representing persons under felony charges in the trial courts.

Staffing:

An attorney/director, five additional attorneys and two secretaries/paralegals and a financial assistant.

Funding:

Funding should be from the state, thereby shifting this burden from the counties. Recognizing the tight budgetary constraints which the Legislature would find itself facing in the coming years, the Task Force recommends that the Legislature seek to address the funding issue by examining the feasibility of adding state assessments on criminal fines imposed in felony and misdemeanor cases, including traffic offenses. Based on preliminary data gathered, for each dollar (\$1) assessed on such offenses, there would be roughly \$700,000 generated in revenue. By imposing assessments on criminal fines, the costs of providing for defense in indigent appeals would fall upon those adjudicated as having broken the law and fined, and would include many of those who were themselves using the services of appointed counsel. Upon this assessment being placed in a special fund, the Legislature would have a good idea of monies available to fund any further programs or to fund any costs taken on by the state.

Miscellaneous Considerations

On occasion, due to conflicts of interest, it will be necessary for the office to use outside contract counsel. Legislation should make provision for compensation of appointed counsel. Using the Capital Post-Conviction Counsel legislation as a guide, the fees allowed in federal court for similar representation might be used as benchmarks, with fees allowed in the corresponding state proceedings at eighty-percent of those levels. Presently, the U.S.

District Court for the Southern District allows \$125 in or out of court in capital matters and \$90 for non-capital felonies. Any fee applications in excess of \$100,000 in capital cases and \$5,200 in most non-capital cases must be approved by the Fifth Circuit Court of Appeals.

Legislation should clearly require all legal staff in these offices to practice exclusively for the office with no outside practice.

Legislation should clearly provide that the offices will not engage in litigation other than that directly related to the representation of the clients and authorized by the statute creating them.

Following the pattern of the Capital Post-conviction Counsel legislation and the present Office of Capital Defense counsel, the director of the office should receive salaries equivalent to those of district attorneys, and the other attorneys should be paid as assistant district attorneys.

Provisions should be made for court approval of fees charged by contract counsel and expenses incurred both by attorneys in the offices and contract counsel, with threshold amounts triggering court approval prior to payment. Procedural matters including aspects involving the perfection of appeals and transitions from representation by trial and appellate counsel should be left to court rules.

ADMINISTRATIVE ASSISTANT FOR PUBLIC DEFENDER TASK FORCE

At its creation, the Public Defender Task Force was charged to "make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel, examining existing public defender programs," and to report to the Legislature each year at least one (1) month before the convening of the regular session. Miss. Code Ann. §25-32-71. In spite of the excellent assistance of the Administrative Office of Courts, the Task Force has been able to collect only partial and incomplete data from the counties.

Furthermore, the Task Force's studies to date make it clear that we have in Mississippi a variety of systems for providing indigent defense, *i.e.*, county-funded fully staffed offices, part-time and full-time contract attorneys and various combinations of these. It is equally clear that a single system of providing defense is not desirable, but rather that individualized systems should be used to meet the needs of districts in various locations and of various sizes. The needs of the various districts should be studied in detail in order to determine the systems best used in counties of differing sizes and locations, and the best method of providing state support for the different systems.

In order to gather the detailed data and to provide further study, the Task Force is seeking a modest staff of a single, legally trained administrative assistant and a secretary or clerical aid. The administrative assistant would conduct on site interviews with the circuit judges and the circuit clerks and develop models to be used by the Task Force in its effort to produce proposals supporting individualized support of the indigent defense obligations of each district.

It is estimated that the cost of such an assistant and a single clerical aid, with minimal office and equipment assets, would be \$156,839. The Task Force believes this should be a time limited position which could be achieved by adding a two-year repealer. Another alternative would be to fund this as a consulting contract to be awarded competitively by the Administrative Office of Courts based on the best proposal for a contract fee of \$100,000.00.

CONCLUSION

The Task Force submits that both proposals should be adopted and funded. The cost will be modest and the benefit to the state and the counties will be great. However, in the event that the Legislature determines that the creation of Office of Indigent Appeals cannot be put in place at this time, the effectiveness of the Task Force's future work depends heavily on obtaining the minimal staff needed to conduct in-depth evaluations. Therefore, we ask that at a minimum, funding for an administrative assistant and clerical support be approved and funded.

Attachment "A"

Public Defender Task Force Minutes

**MISSISSIPPI PUBLIC DEFENDER TASK FORCE
MINUTES
OCTOBER 8, 2004
COURT OF APPEALS CONFERENCE ROOM
10:30 A.M.**

Present

T.H. "Butch" Scipper, MS Association of Supervisors
Judge William Chapman, III, Conference of Circuit Judges
Marvin "Sonny" White, MS Attorney General's Office
Tom Fortner, MS Public Defender Association
Presiding Justice William L. Waller, Jr., Supreme Court

Others Present

Andre deGruy, Office of Capital Defense
Robert Ryan, Office of Post Conviction Relief
Jack Pool, Central Legal, Supreme Court
Margarette Meeks, Administrative Office of Courts

Absent

Ellis "Bilbo" Mitchell, MS Prosecutor Association
Kevin Lackey, Administrative Office of Courts
Senator Charlie Ross, MS Senate Judiciary Committee
Senator Carl "Jack" Gordon, Jr., MS Senate Appropriations Committee
Rep. Edward Blackmon, Jr., MS House Judiciary En Banc Committee
Rep. Johnny Stringer, MS House Appropriations Committee

Call to Order

The meeting of the Mississippi Task Force was called to order by Presiding Justice William L. Waller, Jr.

Old Business

The recommendation submitted to the 2001 Legislature was for the creation of the Division of Indigent Defense. The approximate cost was \$1 million, with \$700,000.000 to be generated by a \$1 increase in fines. The 2001 Legislature did not fund the division.

Reports

1. Office of Capital Defense

Mr. Andre deGruy presented a report on the Office of Capital Defense ("OCD"). OCD has 100-130 cases pending. Approximately 70 new cases are received each year, which are indigent. Most cases are being handled by the counties. A majority of the counties have some type of part-time public defender. Most cases are received after indictment. In most situations, the public defender is local counsel. Nine to 13 direct appeals are still pending; OCD is involved in eight of the appeals. On an average, there are approximately 80 capital indictments per year, of which 70 are indigent.

Mr. deGruy answered questions about the operation of the OCD. Mr. deGruy indicated that his office did not have the capacity to handle more than 17-18 cases per year. Most of the cases are at the trial level. Two cases have gone to trial. A vast majority of the cases settle before trial. Mr. deGruy indicated that monies are generated by special assessments. However, all monies are not spent. He explained that the Legislature determines the amount that the OCD is permitted to spend from the special fund. Mr. deGruy stated that the Legislature should allow the special fund to increase so that competent private attorneys who are qualified to handle death penalty cases may be hired. Mr. deGruy stated that some judges may be apprehensive about using the OCD because of beliefs that counties will be billed. Judge Chapman stated that he believes the circuit judges may not be aware that they can utilize the OCD. Mr. deGruy indicated that the best situation at the trial level is to use the part-time public defender or court-appointed counsel as local counsel with the OCD as co-counsel.

Recommendation - Mr. deGruy asked the task force to include in its recommendations to the Legislature the funding of all death penalty cases. This recommendation would require one additional staff attorney.

2. *Office of Capital Post-Conviction Relief*

Mr. Robert Ryan presented a report on the Office of Capital Post-Conviction Relief ("Capital PCR"). Capital PCR was established by the 2000 Legislature in response to *Henry Carter v. State*. Capital PCR has filed 27 petitions for post conviction relief. Nine new petitions have been filed since August. It takes approximately one year to gather records and to adequately prepare and try the case. Seven petitions for writ of certiorari have been filed with the U.S. Supreme Court. Of these seven, two are juvenile cases (one is stayed; the other relates to whether it is cruel punishment to execute a juvenile). Three evidentiary hearings have been scheduled. Mr. Ryan discussed some budget concerns. He indicated that special attorneys who were appointed by the prior director have not been compensated. Capital PCR has taken the cases back. Mr. Ryan indicated that the budget is sufficient to handle operational needs. However, the budgetary challenge he faces is compensation for special

attorneys. Mr. Ryan further stated that he does not have sufficient funds to hire experts (*Chase* requires a defendant or petitioner to produce an expert). Routinely, requests for experts have been denied. Capital PCR is having difficulties in practice complying with the requirements of *Chase*. As to staffing, Capital PCR has three attorneys, one investigator, one paralegal and a fiscal officer. To free up money, Mr. Ryan indicated that he hired a part-time consultant to handle fiscal matters. Capital PCR has repeatedly requested special funding appropriations for an additional attorney to handle federal habeas petitions and mediation.

Recommendations for task force to consider - Mr. Ryan stated that Capital PCR is having trouble with Rule 22 to hire experts. He shared that Capital PCR has met resistance from the State. The State's position is that Whitfield is fully qualified and Capital PCR doesn't need it. The Code requires that the expert release raw data. Mr. Ryan indicated that as a lawyer, he can't discern what he needs in order to effectively prepare for trial based on information received from Whitfield. Mr. Pool asked whether Capital PCR had plans to submit a proposed change to Rule 22 or if the Legislature would be a better avenue for the change. Presiding Justice Waller stated that Rule 22 was structured to prevent witch hunts and to ensure fair process. He further stated that the Court would consider whatever proposal the Capital PCR submits.

Presiding Justice Waller invited both Mr. Ryan and Mr. deGruy to share their thoughts on the implementation of a statewide public defender system. Mr. Ryan stated that ideally it would be efficient to have a dual system - a statewide system and an appellate level office. Mr. deGruy suggested that the task force look at systems in Arkansas and Georgia with adaptations to the state. He indicated that the full-time public defender system is not desired in some parts of the state. Mr. deGruy indicated that some type of commission/office could help counties structure what they desired. There will still be county contribution. Mr. deGruy gave examples of situations where some counties are profiting from the public defender system. He underscored that oversight is needed by one office that is primarily administrative. (Rule 22b would have to be amended - if a state appellate office is created - subpart b would create right to post conviction relief; need clarity to say record-based claims; if office is created, will need clarification to say only record-based claims for ineffective assistance of counsel). Mr. Scipper indicated that some counties are inclined to continue support of full-time public defender offices with monies currently spent for indigent defense. Judge Chapman stated that a statewide system that mirrors the district attorney's office would be efficient if funding is attainable. Mr. Ryan added that the full-time public defender system is the best route.

The task force thanked Mr. deGruy and Mr. Ryan for their work.

3. Other Old Business

No other old business was discussed.

New Business

1. Election of Chairman

Presiding Justice Waller was elected chairman. Judge Chapman was elected vice-chairman.

2. Discussion of Timeline for Submission of Report to 2005 Legislature

Ms. Meeks stated that the task force's report to the Legislature will be due December 4.

3. Recommendations to 2005 Legislature

Mr. White stated that he saw no reason why the previous recommendation could not be resubmitted for 2005. Mr. Fortner expressed his concerns about the same recommendation. As to the appellate office, doesn't think it is realistic. At this point, the task force does not have sufficient information to support funding the statewide system. He stated that the task force should recommend funding some type of position including support staff that would gather the information. The task force should ask the Legislature to give the position the authority to gather the information from the counties. Mr. Fortner further explained that some parts of the state are better served by a part-time system. The requested staff position would survey the state through personal visits with circuit judges and district attorneys to determine the specific needs of counties. Then, the following year the task force would have the data to support further recommendations. Mr. Fortner suggested that the position be funded through and report to the task force, with authority delegated to the task force to gather the information through the staff position. He indicated that he did not believe the climate was conducive to funding a statewide public defender system. Mr. White added that he did not think the task force had sufficient information to recommend funding a statewide system. He suggested that the task force consider requesting an alternative (e.g., if the Legislature does not support the first recommendation, request funding the position as an alternative). Mr. Fortner added that it has been the sentiments of some judges and prosecutors that they have not been asked about their support of a statewide system. After general discussion, it was the consensus of the task force to develop Mr. Fortner's idea. The task force would need to develop job descriptions, etc. by next the meeting. Mr. Pool indicated that the task force may need to look at choice of title for the position. "Administrative assistant to the task force" may be more attractive than "executive director" position. The position title should be

Mississippi Public Defender Task Force Minutes
October 8, 2004

associated with the task force. The consensus was to recommend the funding of a non-death penalty appellate office and an administrative assistant to the task force. The administrative assistant to the task force will gather data for the purpose of making further recommendations for a statewide public defender system. Presiding Justice Waller moved that Mr. Pool and he draft a proposal for the task force to consider at the next meeting. Mr. Fortner seconded the motion. All members present gave their unanimous support. Discussions of related issues to implementing a statewide public defender system were moot.

4. Discussion of Letter from Public Employees Retirement System (PERS) Regarding Issues Related to a Statewide Public Defender System

After general discussion, it was the consensus of the task force that it had no authority to address the issues.

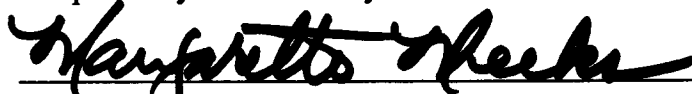
Next Meeting

The next meeting will be held on Friday, November 19 at 10:30 a.m. in the Court of Appeals Conference Room.

Adjournment

The meeting was adjourned at 1:05 p.m.

Respectfully submitted by:



Margarett Meeks

Project Manager, Administrative Office of Courts



Date

**MISSISSIPPI PUBLIC DEFENDER TASK FORCE
MINUTES
NOVEMBER 19, 2004
COURT OF APPEALS CONFERENCE ROOM
10:30 A.M.**

Members Present:

Presiding Justice William L. Waller, Jr., Supreme Court, Chairman
Judge William Chapman, III, Conference of Circuit Judges, Co-Chairman
Marvin "Sonny" White, MS Attorney General's Office
Kevin Lackey, Administrative Office of Courts
Tom Fortner, MS Public Defender Association

Others Present:

Jack Pool, Central Legal, Supreme Court
Margarette Meeks, Administrative Office of Courts

Members Absent:

T.H. "Butch" Scipper, MS Association of Supervisors
Ellis "Bilbo" Mitchell, MS Prosecutors Association
Senator Charlie Ross, MS Senate Judiciary Committee
Senator Carl "Jack" Gordon, Jr., MS Senate Appropriations Committee
Rep. Edward Blackmon, Jr., MS House Judiciary En Banc Committee
Rep. Johnny Stringer, MS House Appropriations Committee

CALL TO ORDER

The meeting of the Mississippi Public Defender Task Force was called to order at 10:40 a.m. by Presiding Justice Waller followed by prayer.

OLD BUSINESS

Minutes

The minutes from the October 8, 2004 meeting were adopted.

Report - Proposed Legislation for Public Defense Activities in Mississippi

Presiding Justice Waller called on Mr. Pool to summarize highlights of the proposed legislation for public defense activities in Mississippi. In making his presentation, Mr. Pool referenced three handouts: 1) Mississippi Public Defender Task Force Memorandum of Proposed Legislation for Public Defense Activities in Mississippi (November 15, 2004); 2)

Worksheet to Estimated Budgets for Office of Indigent Appeals and Administrative Support for Public Defender Task Force; and 3) Mississippi Public Defender Task Force Outline Summary of Legislative Proposal. The handouts are attached to these minutes.

1. **Office of Indigent Defense** - Mr. Pool stated that the new office would represent indigent persons in the appeal of non-capital felony convictions. The office parallels the Criminal Division of the Attorney General's office and would be similarly staffed. There would be six attorneys, two paralegal assistants, and one financial assistant. Funding would be through assessment on criminal fines. Projected \$1 assessment per case on all offenses would generate approximately \$700,000.00. Total projected budget is \$1,332,150.00.
2. **Administrative Assistant for Public Defender Task Force** - Mr. Pool shared that based upon the discussion at the last meeting, it is equally clear that a single system of providing indigent defense is not desirable, but rather that individualized systems should be used to meet the needs of districts in various locations and of various sizes. In order to gather the detailed data and to provide further study, the Task Force is seeking a single, legally trained administrative assistant and secretary or clerical aid. The administrative assistant would conduct on site interviews with the circuit judges and the circuit clerks and develop models to be used by the Task Force in its effort to produce proposals supporting individualized support of the indigent defense obligations of each district. The proposed budget is \$129,795.00. Mr. Pool noted that the proposed budget has not yet been reviewed by the finance department. He will meet with the Supreme Court's finance director per Presiding Justice Waller's instructions. Presiding Justice Waller pointed out that the proposed budget was based on the start-up budgets for the Office of Capital Defense and the Office of Post Conviction Relief.

Following Mr. Pool's presentation, Presiding Justice Waller opened the floor for discussion.

As to the administrative assistant position, Mr. Fortner raised the issue of travel funds. Since the premise of the position is on-site interviews, sufficient travel funds will be needed. The next issue raised by Mr. Fortner was office space. Presiding Justice Waller stated that the Task Force may look at the proposed Office of Indigent Defense or the Administrative Office of Courts ("AOC"). There was general discussion about the location of the position. Mr. Pool pointed out that incidental expenses will be required for the position. Mr. Fortner indicated that the AOC would be a good location in the event the Legislature does not fund the Office of Indigent Defense. Mr. Lackey stated that it would not be problematic to house the position in the AOC. Mr. Fortner noted that physical location isn't really important because the

function of the position will be that of an information conduit. Mr. White emphasized that the position should be independent of the office where housed. Judge Chapman suggested that as a way to make the proposal attractive, the Task Force should emphasize that no additional costs will be involved if housed at the AOC. Mr. Lackey expressed some concerns about the impact on the AOC's budget. If the position is added to the AOC budget, the Legislature may decrease the AOC budget. General discussion continued. Presiding Justice Waller stated that the position should be independent of the AOC or office where physically housed. He stated that maybe the Task Force should propose it as support to the Task Force with funding through the AOC. Mr. White underscored that this suggestion may be the best method since the infrastructure is already in place. He further noted that the Task Force would need to request a reasonable amount for travel, supplies, etc. After additional discussion, Presiding Justice Waller called for a motion. Mr. White moved that the Task Force seeks funding for salaries, etc. for the administrative assistant and clerical support positions as support to the Task Force and that the positions work out of the AOC. Judge Chapman seconded the motion. Passed by unanimous vote.

As to the Office of Indigent Appeals, there was general discussion about the proposed budget. Mr. Fortner stated that the proposed budget appears to be very workable. Presiding Justice Waller noted that the start-up budgets for the Office of Capital Defense and the Office of Post Conviction Relief were used as guidelines. There was brief discussion about clerical support. It was noted that the number of clerical positions may be sufficient since most practicing attorneys draft their own documents on their desktop or laptop computers. There was some discussion about attorneys' fees and who would determine them. Mr. Pool suggested that the Task Force follow the threshold for capital appeals. Presiding Justice Waller stated that some expert fees may also be required when different attorneys are involved who may raise ineffective assistance of counsel. Mr. Pool also indicated that the Task Force would need to consider how to handle fees - whether statutory or by Court rule. Next, the Task Force discussed how motions would be handled. After general discussion, Mr. Pool suggested that this area be handled by Court rule since many issues cannot be anticipated during the proposal phase. Presiding Justice Waller stated that he was in support handling this area by Court rule. He explained that Court rule would give the Task Force some flexibility for addressing the mechanics. Judge Chapman then asked questions about the budget worksheet. He pointed out that the subtotal for contractual services appeared to be too large in light of the itemized entries. He stated that the subtotal may actually be decreased by approximately \$ 200,000.00. Mr. Pool thanked Judge Chapman for his observation and indicated that he would verify the figures.

Presiding Justice Waller read to the Task Force a fax from Mr. Scipper. According to the fax, Mr. Scipper supports the funding of the Office of Indigent Defense. As to the administrative

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November 19, 2004

assistant position, Mr. Scipper supports the position if it will not be permanent.

Presiding Justice Waller asked Mr. Lackey to identify other areas that needed to be budgeted for the administrative assistant position. The areas identified were travel, equipment, telephone, postage, membership fees to professional organizations, cellular service and office space (if overhead will be apportioned).


Presiding Justice Waller reminded the Task Force that the report to the Legislature would be due by December 4. He stated that the memorandum and budget would be revised to incorporate comments from today's meeting. He also stated that the Task Force would need to get a member of the Legislature to introduce the legislation, write the bill and schedule the hearing date.

There was some discussion about the longevity of the administrative assistant position. Mr. Lackey asked if the position would be permanent or temporary. Mr. White stated that it depends on whether the Office of Indigent Appeals is funded. He explained that the position may be needed for two to three years. Once the statutory requirements are met, there would be no need for the position.

Adjournment

There being no further business, the meeting was adjourned at 11:40 p.m.

Respectfully submitted by:



Margarette Meeks
Project Manager, Administrative Office of Courts

12-2-04

Date

Attachment "B"

**Worksheet to Estimate Budget for Office of
Indigent Appeals**

WORKSHEET TO ESTIMATE BUDGET FOR OFFICE OF INDIGENT APPEALS

OFFICE OF INDIGENT APPEALS			
Salaries and Benefits			
Director/attorney*	114,235		
Staff attorney****	91,963		
Staff attorney****	91,963		
Staff attorney****	91,963		
Staff attorney****	91,963		
Staff attorney****	91,963		
Clerical/paralegal**	37,332		
Clerical/paralegal**	37,332		
		648,715	
Travel and subsistence			
		43,000	
Contractual Services			
Tuition, rewards and awards	2,000		
Communications, transport & utilities	75,000		
Public information	500		
Rents, buiding and floor space*****	27,000		
Rents, office equipment*****	4,600		
Contract attorneys fees	150,000		
Investigative and expert expenses	60,000		
SAAS Fees	1,440		
Dept. of Audit	1,000		
State Personnel Board	900		
Repairs & service	500		
Insurance & fidelity bonds	10,000		
Membership dues	900		
Tort claim assessment	1,800		
Data processing	27,500	454,140	
Repairs and services		500	
Commodities			
Printing, office supplies and materials	18,000		
Office equipment	15,000		
		33,000	
Capital outlay			
Furniture	23,000		
Computer equipment	35,000	23,000	
Total FY2006 budget for Office of Indigent Appeals			1,202,355

Notes on Office of Indigent Appeals

*Director's salary and benefits based on salary of 95,796

**Staff attorney salary and benefits based on salary of 76,636

***Fiscal assistant salary and benefits based on salary of 30,000

WORKSHEET TO ESTIMATE BUDGET FOR OFFICE OF INDIGENT APPEALS

*****Rent for building and floor space base on 2000 sq. ft. @13.50

*****Equip rental based on 2 copiers (\$1,800 ea.) and postage meter (\$1,000)

Attachment "C"

**Worksheet to Estimate Budget for
Administrative Support for Public Defender
Task Force**

**WORKSHEET TO ESTIMATE BUDGET FOR
ADMINISTRATIVE ASSISTANT/ATTORNEY FOR
PUBLIC DEFENDER'S TASK FORCE**

Salaries, Wages, & Fringes	Salary	Benefits		Total
Administrative Assistant/Attorney	76,636	17,227	93,863	
Secretary; Clerical Aid	30,000	8,826	38,826	
Total Salaries, Wages, & Fringes				132,689
Travel				10,000
Contractual Services				
MMRS			1,550	
Postage			350	
SAAS			200	
Telephone - Local			500	
Telephone - Long Distance			2,000	
Telephone - Wireless			600	
Tort Claims Assessment			100	
Tuition and Training			350	
Total Contractual Services				5,650
Commodities				500
Equipment				
Office Furniture and Fixtures			3,000	
Equipment - Computers			5,000	
Total Equipment				8,000
Total				156,839

Attachment "D"

Copy of Indigent Defense Survey

**THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE
INDIGENT DEFENSE SURVEY**

This survey is being sent pursuant to Mississippi Code § 25-32-71, which instructs the Task Force to obtain information from counties as to the current cost of indigent defense (for public defenders or court-appointed attorneys for felonies). Unless accurate information is obtained from the counties, the State will be unable to adequately determine the feasibility of a state-funded system. It is vital that we obtain this information from each county.

Please provide the costs for your county's annual Felony Indigent Defense expenses, excluding Capital Cases. This survey is being sent to chancery clerks, county administrators, and senior circuit judges. You may wish to coordinate so that only one survey is returned per county. A pre-addressed envelope is enclosed for your convenience.

County _____ Circuit District No. _____

Person Completing Survey _____

Title _____ Telephone Number _____

1. Percentage of felony defendants who have indigent counsel in the named county

_____ %

2. Attorneys are paid by:

Full-time Public Defender Office (annual budget \$ _____)

Contractual Basis

Individual Case Appointment

3. Number(s) of Attorneys Providing Indigent Defense Services:

If full-time Public Defender Office, number of attorneys _____

If contractual, number of attorneys employed to handle felonies _____

If individual case appointment, number of attorneys on current list _____

4. FY2003 Expenses Actually Incurred for Felony Indigent Defense (excluding Death Penalty)

a. Attorney Costs \$ _____
(including office budget if full time office)

b. Attorneys for Conflict Cases \$ _____
(If contractual or Public Defender Office)

c.	Expert Fees	\$ _____
d.	Filing Fees	\$ _____
e.	Transcripts	\$ _____
f.	Other Costs	\$ _____
	TOTAL	\$ _____

Of the above total costs, please estimate the amount or percentage that is spent on indigent appeals of non-capital felony convictions \$ _____

7. Is there a particular "horror story" regarding indigent defense costs that has occurred in your county in the past few years (e.g., multiple re-trials)?

8. What effect has the creation of the Office of Capital Defense Counsel had on the processing of death penalty prosecutions in your county?

9. To what extent, if any, has the creation of the Office of Capital Defense Counsel resulted in cost savings for your county?

10. What effect has the creation of the Office of Capital Post-Conviction Counsel had on the processing of death penalty prosecutions in your county?

11. To what extent, if any, has the creation of the Office of Capital Post-Conviction Counsel resulted in cost savings for your county?

12. Comments:

Thank you for your cooperation.

Please return to:
Margarette Meeks, Project Manager
Administrative Office of Courts
Supreme Court of Mississippi
P. O. Box 117
Jackson, MS 39205
Phone: 601/354-7446
Fax: 601/354-7459

Attachment "E"

**Compilation of Results of
Indigent Defense Survey**

Mississippi Public Defender Task Force Indigent Defense Survey Results 2004

	% felony defendants with indigent defense	No. attys Full-time PD Office	No. attys Part-time PD Office	No. attys on contractual basis
Adams				
Alcorn				
Amite	85.00%			
Attala	75.00%	1		
Benton	80.00%	1		
Bolivar				
Calhoun				
Carroll				
Chickasaw	90.00%	1		
Choctaw	85.00%			5
Claiborne				
Clarke				
Clay	50.00%			2
Coahoma				
Copiah				
Covington	65-75%			1
Desoto				
Forrest	90.00%	3		0
Franklin				
George				
Greene	90.00%		1	
Grenada				
Hancock				
Harrison				
Hinds				
Holmes				
Humphreys				
Issaquena	100.00%			
Itawamba	90.00%	1		
Jackson	75.00%	4		2
Jasper	65-75%			1
Jefferson				
J. Davis	99.00%	1		
Jones				
Kemper	90.00%			
Lafayette	90.00%			2
Lamar	75.00%			2
Lauderdale	75.00%			5
Lawrence	90.00%			1
Leake				
Lee				
Leflore	95.00%			
Lincoln	90.00%	3		
Lowndes				
Madison				
Marion	55.00%			2
Marshall				
Monroe				
Montgomery				
Neshoba				

Mississippi Public Defender Task Force Indigent Defense Survey Results 2004

	% felony defendants with indigent defense	No. attys in Full-time PD Office	No. attys Part-time PD Office	No. attys on contractual basis
Newton				
Noxubee				
Oktibbeha				
Panola				
Pearl River				
Perry	43.10%		1	
Pike	90.00%			4
Pontotoc				
Prentiss				
Quitman	85.00%			2
Rankin				
Scott				
Sharkey				
Simpson	65-75%			1
Smith	65-75%			1
Stone				
Sunflower				
Tallahatchie				
Tate	90.00%	1		
Tippah				
Tishomingo				
Tunica				
Union				
Walthall	75.00%			
Warren				
Washington	90.00%	2		
Wayne	80.00%	2		
Webster	90.00%	2		
Wilkinson				
Winston	95.00%	2		
Yalobusha				
Yazoo	97.00%			4
Totals		24	2	35

Mississippi Public Defender Task Force Indigent Defense Survey Results 2004

	No. of attys on individual case app't	Attorney Costs	Atty Costs for conflict cases	Expert fees	Filing fees	Transcript costs
Adams						
Alcorn						
Amite	4	\$22,373.50			\$5,415.00	\$1,017.00
Attala	4	\$106,370.00	\$41,720.00	\$1,842.00		
Benton	3		\$2,495.96		\$194.00	\$24.00
Bolivar						
Calhoun						
Carroll						
Chickasaw	5	\$30,065.44	\$2,089.25	\$995.00	\$300.00	\$958.00
Choctaw			\$5,800.76	\$0.00	\$100.00	\$746.00
Claiborne						
Clarke						
Clay		\$78,938.00	\$47,322.00	\$450.00	\$200.00	\$214.00
Coahoma						
Copiah						
Covington		\$26,400.00				
Desoto						
Forrest	1	\$146,000.00	\$0.00	\$5,000.00	\$0.00	\$1,000.00
Franklin						
George						
Greene		\$13,325.00	\$2,599.00		\$400.00	
Grenada						
Hancock						
Harrison						
Hinds						
Holmes						
Humphreys						
Issaquena		\$4,400.00				
Itawamba	5	\$28,550.00	\$14,651.80	\$700.00		\$4,015.75
Jackson		\$560,000.00	\$60,000.00	\$75,000.00	\$4,000.00	\$5,000.00
Jasper		\$26,700.00				
Jefferson						
J. Davis	4	\$54,224.00	\$18,062.63			\$2,414.32
Jones						
Kemper	6	\$20,211.30				
Lafayette	15	\$78,000.00	\$12,000.00	\$55,000.00		\$5,000.00
Lamar		\$75,000.00	\$4,303.16			
Lauderdale		\$226,606.00			\$3,237.00	\$4,033.00
Lawrence	5		\$24,759.00	\$488.32		
Leake						
Lee						
Leflore	6	\$230,743.00				
Lincoln		\$138,601.32				
Lowndes						
Madison						
Marion		\$84,971.68	\$32,864.50	\$6,655.00	\$400.00	\$2,709.00
Marshall						
Monroe						
Montgomery						
Neshoba						

Mississippi Public Defender Task Force Indigent Defense Survey Results 2004

	No. attys on individual case app't	Attorney Costs	Atty Costs for conflict cases	Expert fees	Filing fees	Transcript costs
Newton						
Noxubee						
Oktibbeha						
Panola						
Pearl River						
Perry		\$18,115.45	\$8,789.68		\$195.00	
Pike		\$238,704.00				
Pontotoc						
Prentiss						
Quitman		\$32,400.00	\$0.00	\$0.00	\$0.00	
Rankin						
Scott						
Sharkey						
Simpson		\$33,974.00				
Smith		\$24,000.00				
Stone						
Sunflower						
Tallahatchie						
Tate	5	\$46,921.23	\$15,678.09	\$9,761.98	\$6,159.00	\$1,000.00
Tippah						
Tishomingo						
Tunica						
Union						
Walthall	4		\$45,000.00	\$7,000.00		\$3,000.00
Warren						
Washingto	7	\$263,545.00	\$244,924.42	\$8,099.70	\$1,500.00	
Wayne		\$50,000.00	\$5,000.00	\$2,000.00	\$400.00	\$88.00
Webster		\$35,220.24		\$1,500.00		\$900.00
Wilkinson						
Winston		\$72,787.92	\$1,567.80		\$200.00	
Yalobusha						
Yazoo		\$150,000.00	\$1,100.00	\$150.00		\$300.00
Totals	74	\$2,917,147.08	\$590,728.05	\$174,642.00	\$22,700.00	\$32,419.07

Mississippi Public Defender Task Force Indigent Defense Survey Results 2004

	Other costs	Total Costs	% Total Costs Spent on Indigent appeals (non-capital felonies)
Adams		\$0.00	
Alcorn		\$0.00	
Amite		\$28,805.50	10.00%
Attala		\$149,932.00	
Benton		\$2,713.96	
Bolivar		\$0.00	
Calhoun		\$0.00	
Carroll		\$0.00	
Chickasaw	\$33,761.58	\$68,169.27	
Choctaw		\$6,646.76	20.00%
Claiborne		\$0.00	
Clarke		\$0.00	
Clay		\$127,124.00	100.00%
Coahoma		\$0.00	
Copiah		\$0.00	
Covington		\$26,400.00	
Desoto		\$0.00	
Forrest	\$70,000.00	\$222,000.00	9.00%
Franklin		\$0.00	
George		\$0.00	
Greene	\$5,091.19	\$21,415.19	99.00%
Grenada		\$0.00	
Hancock		\$0.00	
Harrison		\$0.00	
Hinds		\$0.00	
Holmes		\$0.00	
Humphreys		\$0.00	
Issaquena		\$4,400.00	
Itawamba	\$7,037.34	\$54,954.89	59.00%
Jackson		\$704,000.00	10.00%
Jasper		\$26,700.00	
Jefferson		\$0.00	
J. Davis	\$773.17	\$75,474.12	
Jones		\$0.00	
Kemper		\$20,211.30	23.00%
Lafayette		\$150,000.00	3.00%
Lamar		\$79,303.16	
Lauderdale		\$233,876.00	8.00%
Lawrence		\$25,247.32	0.00%
Leake		\$0.00	
Lee		\$0.00	
Leflore		\$230,743.00	85.00%
Lincoln	\$862.23	\$139,463.55	20.00%
Lowndes		\$0.00	
Madison		\$0.00	
Marion		\$127,600.18	3.00%
Marshall		\$0.00	
Monroe		\$0.00	
Montgomery		\$0.00	
Neshoba		\$0.00	

Mississippi Public Defender Task Force Indigent Defense Survey Results 2004

	Other	Total	% Total Costs Spent
	Costs	Costs	on Indigent appeals
Newton			
Noxubee		\$0.00	
Oktibbeha		\$0.00	
Panola		\$0.00	
Pearl River		\$0.00	
Perry	\$1,035.00	\$28,135.13	
Pike		\$238,704.00	
Pontotoc		\$0.00	
Prentiss		\$0.00	
Quitman	\$0.00	\$32,400.00	
Rankin		\$0.00	
Scott		\$0.00	
Sharkey		\$0.00	
Simpson		\$33,974.00	
Smith		\$24,000.00	
Stone		\$0.00	
Sunflower		\$0.00	
Tallahtchie		\$0.00	
Tate	\$5,000.00	\$84,520.30	10.00%
Tippah		\$0.00	
Tishomingo		\$0.00	
Tunica		\$0.00	
Union		\$0.00	
Walthall	\$2,000.00	\$57,000.00	
Warren		\$0.00	
Washington	\$1,519.48	\$519,588.60	5.00%
Wayne		\$57,488.00	5.00%
Webster	\$1,000.00	\$38,620.24	100.00%
Wilkinson		\$0.00	
Winston	\$15.22	\$74,570.94	
Yalobusha		\$0.00	
Yazoo	\$10,000.00	\$161,550.00	1.00%
Totals	\$138,095.21	\$3,875,731.41	

Attachment "F"

Other States' Public Defender Systems

OTHER STATES' PUBLIC DEFENDER SYSTEMS

The most current information on other states' public defender systems has been prepared by The Spangenberg Group. The compilation is entitled "State and County Expenditures for Indigent Defense Services in Fiscal Year 2002," published in September 2003. This information will be made available upon request.