

**MISSISSIPPI
PUBLIC DEFENDERS
TASK FORCE**



Report to the Mississippi Legislature

September 29, 2000

**MISSISSIPPI PUBLIC DEFENDERS TASK FORCE
REPORT TO THE MISSISSIPPI STATE LEGISLATURE
September 29, 2000**

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

SUPREME COURT OF MISSISSIPPI
POST OFFICE BOX 117
JACKSON, MISSISSIPPI 39205
TELEPHONE (601) 359-3697
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LENORE L. PRATHER
CHIEF JUSTICE

EDWIN LLOYD PITTMAN
FRED L. BANKS, JR.
PRESIDING JUSTICES

September 29, 2000

CHUCK McRAE
JAMES W. SMITH, JR.
MICHAEL P. MILLS
WILLIAM L. WALLER, JR.
KAY B. COBB
OLIVER E. DIAZ, JR.
JUSTICES

STEPHEN J. KIRCHMAYR
COURT ADMINISTRATOR

The Honorable Amy Tuck
Distinguished Members of the Senate
The Honorable Tim Ford
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. All task force members agree that reform of the 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.

¹The opinions expressed in this transmittal letter are that of the author and not of the individual task force members. This report has not been reviewed or approved by 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-death sentence 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. The State Public Defender

A State Public Defender with limited authority is needed to oversee the new agencies (Capital Defense and Indigent Appeals) and to provide administration, budgeting and financial support in one office for the entire system (see attached matrix). While the offices of Capital Defense Counsel and Indigent Appeals could certainly operate without the oversight of a State Public Defender, the directors of each agency would be unnecessarily involved in administrative functions instead of practicing law. There would also be wasteful duplication of support functions such as that of a fiscal officer. Finally, and perhaps most importantly, there would be one individual to report and be accountable for the efficient operation of the indigent defense system.

3. Funding for Indigent Defense

All task members agree that the costs of indigent defense should be shifted from the counties to an alternate funding source. In a time of limited state revenue resources, these reforms can be added with funding provided by costs and assessments added to traffic tickets and other misdemeanor and felony dispositions. This provision for funding is currently in use in many other states and is a pragmatic way to resource improvements to the justice system.

The Honorable Amy Tuck, et al.
September 29, 2000
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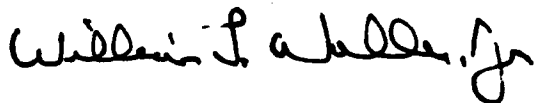
CONCLUSION

Finally, it is the unanimous belief of all task force members that the Legislature should authorize the continued work of the Public Defenders Task Force. The task force represents a cross-section of players in the justice system who have all demonstrated a commitment to improve the system.

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

I deeply appreciate the work of Rick Patt of the AOC who has worked tirelessly in conducting the statewide survey, performing the research, acting as secretary and completing this report.

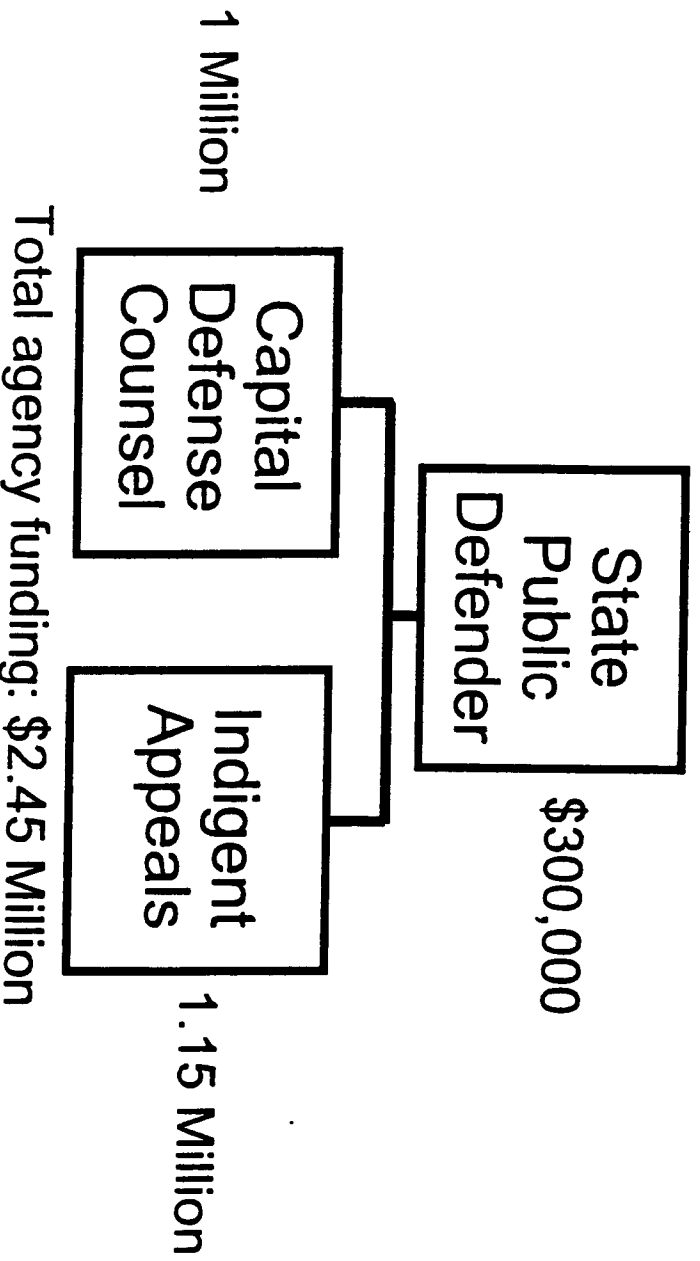
Sincerely,



William L. Waller, Chairman
Public Defenders Task Force

WLW:mim
Enclosure

- 4 year term
- Appointed by Governor
- Oversees agency
- POC indigent representation issues
- Provide admin, budgeting and financial support for agency



- Provides representation or support to court appointed attorneys for all indigents under sentence of death
- Trial judges retain appointive authority as to trial counsel
- Provide representation on appeal to indigents convicted of felonies, but not under sentence of death

Statutory Creation

MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Miss. Code Ann. § 25-32-71 (Supp. 2000)

In section 30 of House Bill 1228, as signed by the Governor, there is created a Mississippi Public Defender Task Force, 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 Committee was charged to make a needs-study of the circuit court districts for state-funded indigent counsel, analyze the existing public defender systems, and provide this report to the Legislature by September 29, 2000. The Committee also looked to the types of other states' public defender systems, and studied the relationship between the circuit bench and the appointment of public defenders.

In the next section of the report, a listing of the members of the Task Force is provided, and a summary of its activities is contained in the Introduction and Narrative, with the minutes of the meetings included in Attachment "A".

Membership of the Task Force

MISSISSIPPI PUBLIC DEFENDER SYSTEM TASK FORCE
(September 29, 2000)

Representative Charles W. Capps, Jr.
House Appropriations Chairman
P.O. Box 308
Cleveland, Mississippi 38732
(662) 843-5341 (Clev.) (601) 359-3340 (Leg.)
(601) 359-3164 (Leg. fax)
(Chairman - House Appropriations Cmte.)

Stephen B. Simpson
Office of the District Attorney
P.O. Box 1180
Gulfport, MS 39502
(228) 865-4003
(228) 865-4239 - fax
(Prosecutors Association President)

Thomas M. Fortner
Hinds County Public Defender
P.O. Box 23029
Jackson, MS 39225-3029
(601) 948-2683
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(designee of Public Defenders Association)

Senator Bennie L. Turner
Senate Judiciary Chairman
P.O. Drawer 1500
West Point, MS 39733
(662) 494-6611 (W.P.) (601) 359-3237 (Leg.)
(662) 494-4814 - fax
(Chairman - Senate Judiciary Committee)

Senator Jack Gordon
Senate Appropriations Chairman
P.O. Box 377
Okolona, MS 38860
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(Chairman - Senate Appropriations Cmte.)

Justice William L. Waller, Jr.
Mississippi Supreme Court
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Circuit Court Judge
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Rick D. Patt
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P.O. Box 117
Jackson, MS 39205
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(designee of Administrative Office of Courts)

Marvin L. White, Jr.
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P.O. Box 220
Jackson, MS 39205
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(Attorney General's Office representative)

Mr. T.H. (Butch) Scipper
Chancery Court Clerk
230 Chestnut St.
Marks, MS 38646
(662) 326-2661
(662) 326-8004 -fax
(designee of the Association of Supervisors)

CIRCUIT JUDGES ALTERNATE MEMBER
Judge Dale Harkey
Circuit Court Judge
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(228) 769-3262 - fax

Introduction and Narrative

**MISSISSIPPI PUBLIC DEFENDERS TASK FORCE
REPORT TO THE MISSISSIPPI STATE LEGISLATURE
September 29, 2000**

INTRODUCTION

In the 2000 Regular Session of the Mississippi Legislature, House Bill 1228 emerged from the Conference Committees and was passed by the House and Senate, and then signed by Governor Musgrove. This historic legislative enactment would create and fund an Office of Capital Post-Conviction Counsel and a separate Office of Capital Defense Counsel, repeal the existing Statewide Public Defender Act of 1998, and create a Mississippi Public Defenders Task Force to examine the statewide public defender issue and submit a report to the Legislature by September 29, 2000. A copy of the statutory language creating the Task Force and a listing of its appointed membership is contained in the pages preceding this narrative.

The Legislature, sensitive to desires by all involved parties to be included in the discussions of these issues, made membership on the Task Force subject to a single appointment by various officials and entities, to wit: the Mississippi Supreme Court, the Mississippi Circuit Judges Conference, the Mississippi Attorney General, the President of the Mississippi Prosecutor's Association, the President of the Mississippi Public Defenders Association, the Administrative Office of Courts, the Mississippi Supervisors Association, the Chairmen of the House and Senate Appropriations Committees, the Senate Judiciary Chairman, and the Chairman of the House Judiciary *En Banc* Committee. Due to the short

time frame allowed from inception to the due date of the report, the Committee was able to meet on three occasions, identifying a course of action where information could be gathered in order to satisfy the statutory mandate.

NARRATIVE

Meetings of the Task Force

In the first meeting of the Task Force, Supreme Court Justice William Waller was elected Chairman of the group, and Circuit Judge Isadore Patrick was appointed Vice-Chairman. The minutes of the meetings of the Task Force are attached in Appendix "A". At this meeting, the group decided that surveys would be conducted of the counties and of the Senior Circuit Judges, in order to obtain information regarding how counties currently appoint and pay for public defenders in non-capital felony cases, the costs associated with these appointments, and the opinions of the Circuit Judges on the way the current system is working, with questions to determine the Judges' needs and preferences as to the system which would work the best in their district.

At the second meeting of the Task Force, the group analyzed the preliminary returns from the surveys sent out, and commented on how they reflected the different systems throughout the state. The committee discussed various methods whereby the State could possibly look to take some of the burden off the counties in appointing counsel for felony, non-capital indigent defendants, and discussed incremental policies which would possibly be able

to first relieve the counties from the burden of having to appoint counsel for felony appeals. A full explanation of the Task Force's recommendations for the setup of such an office, and the direction that the State should look may be found in the Recommendations section of this report.

At the third meeting of the Task Force, the members examined the proposal sent to them by Justice Waller, which outlined the creation of a new Office of Indigent Appeals, which would be a division under the direction of a new Office of the State Defender, with the State Defender also assuming authority for the operation of the currently-existing Office of Capital Defense Counsel. The Task Force voted to recommend this method of alleviating some of the county costs by having the state assume responsibility for indigent felony appeals, as a starting point for future legislation. Fee procedure was also addressed, with the membership proposing items set out in detail in the following report on Recommendations.

Data Collected

In regards to actions taken to collect information, the AOC mailed a copy of a survey, included as Attachment "B", to each of the Senior Circuit Judges of each district. The results of that survey may be found in Attachment "C" of this report. The Judges were asked about the percentage of felony defendants who appeared in front of them in their districts who were indigent and needed counsel appointed to represent them. The judges also made comments about how the system of felony public defense was working in their district, and their opinion

of its operation and the need for a state-funded system in their area. Results of this survey were then mailed to every Circuit Court Judge for additional comments or corrections if they so desired.

The county survey that was sent out was mailed to the Chancery Clerks of each county, on the recommendation of Task Force member Butch Scipper, who is the Chancery Clerk in Quitman County. A copy of the survey is attached, as Attachment "D". Since most of the questions dealt with county finances, the Task Force felt that the Chancery Clerk would either have the information, or be able to direct the survey to the person in the county who would. The county survey was also mailed to the Senior Circuit Judge in each judicial district, as they would have some relevant information as well. In order to get greater compliance with the survey request, the second mailing was sent to all Chancery and Circuit Clerks of each county which had not responded to the initial request. A third mailing was sent to every Chancery and Circuit Clerk, and to each of the Circuit Judges so that the counties could supplement any of their answers or send in copies of the survey if not previously returned.

A compilation of the information sent in from the county survey is contained in Attachment "E", and is in three parts, all of which have the counties organized by circuit court districts. If there is a blank out from the county name, no survey was returned. If there is a dashed line (----) then the survey was returned, but that particular question was not answered. The first section of the county survey notes the percentage of felony defendants in the county who are indigent and require appointed counsel at taxpayers' expense. The next section

documents how the counties pay appoint counsel for indigent defense, either by employing a full-time public defenders office, contracting with one or more attorneys to handle the felony indigent defense workload, or appointing counsel on a case-by-case basis from a pool of attorneys who have agreed to handle such cases. In counties where there is a full-time office or using contract attorneys, counsel is still appointed on a case-by-case basis for conflicts cases. The number of attorneys and the method by which and the amount that they are paid are also detailed in this section of the county survey results. The third section of the county survey shows the amount that the counties expended on felony indigent defense in Fiscal Year 1999, the amount, if determinable, which was spent on felony indigent appeals (excluding death penalty cases), and the amount that the county budgeted to spend on felony indigent representation for Fiscal Year 2000.

Overview

Based upon information gathered from the surveys, it is apparent that indigent defense remains a vexing problem for the counties. Many counties are unsure about proper amounts to budget for these expenses. From the information gathered, it can be seen that counties are spending approximately a little more than \$9 million per year on felony, non-capital indigent defense (this figure includes estimations on expenses in counties not responding to the survey).

The Task Force felt that the problem of funding for indigent defense could not be addressed all at once, and that the better solution was to have an assumption by the state of

indigent costs in a gradual manner, starting with an office handling felony indigent appeals. Realizing the tight budgetary constraints which the Legislature would find itself facing in the coming years, the Task Force recommended that the Legislature seek to address the funding issue by examining the feasibility of imposing state assessments on criminal fines imposed in felony and misdemeanor cases, including traffic offenses. Based on preliminary data gathered, for each dollar (\$1) put on an assessment on such fines (with the possible inclusion of civil filing fees in the figure obtained), there would be a generation of roughly \$700,000 in revenue. By the method of imposing assessments on criminal fines, the costs of providing indigent defense 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 future programs or to fund any costs taken on by the state.

The Circuit Judges are in favor of examining the system to see how the counties and districts may be assisted in providing public defenders. The judges realize, and the Task Force agrees, that each county and district is unique, and what works for one district may not be appropriate for others. In this matter, the Task Force realizes that many districts may wish to employ a full-time local office, whereas other districts may have a system whereby contract/appointive counsel performs adequately and, as is done in certain other states, local control is maintained with the state assuming the financial costs. The Task Force did not recommend the state-funding of district, trial-level representation for the 2001 Legislative Session, as this would be too much too soon, considering all of the factors. Also, under the

recommendations proposed in the following section, Circuit Judges would still have control over the approval of expenses and authority in the appointment of counsel.

The Mississippi Public Defender Task Force recommendations for the 2001 Legislative Session are contained in the following section. It is the intent of the Task Force to continue to meet this fiscal year in order that further recommendations may be made and study conducted, and it would recommend that the Legislature consider allowing the Task Force to stay together as a group in order that it might serve, in an advisory capacity, the Legislature and the various entities associated with providing indigent representation for criminal defendants.

**Proposed Recommendations for the
2001 Legislative Session**

MISSISSIPPI PUBLIC DEFENDER TASK FORCE

MEMORANDUM OF PROPOSED LEGISLATION FOR PUBLIC DEFENSE ACTIVITIES IN MISSISSIPPI

The following is an outline of proposed legislation which would modify the year 2000 legislation, and would create a State Public Defender with overall supervision of the currently-existing Office of Capital Defense Counsel and add a newly-created Division of Indigent Appeals. The Division of Indigent Appeals would represent indigent persons in the appeal of non-capital felony convictions. The State Public Defender would have overall responsibility for appointing the directors of these two divisions, regulating their activities, and handling administrative, legislative, budgeting and financial matters for both.

Recognizing that, for various reasons, it will not be feasible to overhaul the entire indigent defense system at one time, the creation of this structure, following the newly created Office of Capital Post-conviction Counsel can be considered an aggressive but practical next step.

Funding for the State Public Defender and for the divisions is, of course, dependant on the volume of criminal appeals and the proportions of those with appointed and private counsel. In 1999 the Supreme Court received 8 capital appeals and 301 non-capital felony appeals. At the current rate of filings, it is projected that in 2000 approximately 370 non-capital felony appeals will be filed. Based on these two years, approximately 350 non-capital felony appeals can be expected each year. 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 315 appeals. Perhaps 30 of these would be handled by contract counsel due to conflicts or other circumstances. If so, the number of appeals handled by the office, in house, would be approximately 290 each year, or, assuming six attorneys in the office, 48 per attorney. This figure does not include include motions for rehearing, petitions for certiorari and other related matters.

1. State Public Defender

Appointing authority:

The State Public Defender would be appointed by the Governor, and other employees within the office would be selected and employed by the State Public Defender. The State Public Defender would oversee the operations of the agency as well as the two divisions, would serve a four-year term, and would be the spokesman for all matters relating to indigent defense representation. The employees of the agency and its divisions would serve at his or her will and pleasure.

Duties:

Appoint and supervise the directors of the Division of Capital Defense Counsel and the Division of Indigent Appeals.

Provide administrative, budgeting and financial services support for the Division of Capital Defense Counsel and the Division of Indigent Appeals.

Handle applications and contracts for grants and assistance for such offices.

Co-ordinate the collection and dissemination of statistical data as required of the two divisions.

Develop plans and proposals for further development of a statewide public defender system in coordination with the currently-existing Mississippi Public Defenders Task Force

Staffing:

A director, two clerical employees and a fiscal assistant.

Funding:

(Funding requirements have not yet been determined; however, it is expected that this will be in the range of \$300,000 per year.)

2. Division of Capital Defense Counsel

The present Office of Capital Defense Counsel would be modified and incorporated into the new structure as the Division of Capital Defense Counsel with all the duties and responsibilities held by the present Office of Capital Defense Counsel, with appointment and supervision of the division director by the State Public Defender.

Appointing authority:

The Director would be appointed by the State Public Defender (rather than by the Governor as provided in present legislation, but with provision that the person now serving would retain his position for the remainder of his term.) Employees of the division's office would be selected by the director, with the approval of the State Public Defender. The director and employees would serve the will and pleasure of the State Public Defender.

Duties:

Provide representation on appeal for all persons under sentence 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.

Provide trial representation of all persons charged with a crime which may result in a sentence of death, as it may be called upon to do so by the trial judge. This responsibility would be limited to the availability of staff and funds . The trial judges would retain the prerogative of either selecting outside counsel or requesting appointment by the office, to the extent that office resources are available. Fees and expenses of trial counsel selected by the trial judges would be paid by the state out of the budget allocated to the office.

Provide advice, education and support to those private attorneys appointed by the trial judges in death penalty trials. This duty would involve services formerly provided at the trial level by the Capital Defense Resource Center.

Staffing:

Staffing would remain the same as is now provided for in H.B. 1228, with the exception that no salaried fiscal assistant would be provided in the division. (It is thought that with the State Public Defender providing fiscal and budgeting services, a fiscal assistant would be unnecessary.) This would require a staff of an attorney-director, three additional attorneys, two investigators and two secretaries/paralegals.

Funding:

(Funding requirements have not yet been determined; however, it is expected that this will be in the range of \$1 to 1.5 million per year. The fiscal assistant position may be eliminated if put under the State Defender, however additional staffing may be necessary based upon recommendations of the Director of the Office of Capital Trial Counsel due to increased funds for additional attorneys or to fund private attorneys appointed in death penalty cases.)

3. Division of Indigent Appeals**Appointing authority:**

The Director would be appointed by the State Public Defender. Employees of the division would be selected by the director, with the approval of the State

Public Defender. The director and the employees would serve at the will and pleasure of the State Public Defender.

Duties:

Provide representation on appeal for all indigent 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.

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. (With the State Public Defender providing fiscal support, a fiscal assistant should not be needed.)

Funding:

(Funding requirements have not yet been determined; however, it is expected that this will be in the range of \$1,150,000 per year.)

Miscellaneous Considerations

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 as authorized by the statute creating them.

Legislation should make provisions for compensation of appointed counsel in both capital and non-capital proceedings . Using the Capital Post-Conviction Counsel legislation as a guide, the fees allowed in federal court for similar representation might be used 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 \$70 in-court and \$50 out-of-court for non-capital felonies. Fees for associate defense counsel in cases wherein more than one attorney is appointed for a defendant may be set at a lower level by the court in which the case is pending. Defense counsel seeking compensation,

reimbursement for expenses incurred or authority to incur expenses in a case shall, prior to payment, submit a detailed statement of services and time spent to the court in which the matter is pending. The court will review the statement and application for compensation along with all prior applications in order to determine whether the fees charged are reasonable, within the limits of the statute and are necessary for proper representation. In death penalty cases, all fee applications will be served on the State Public Defender who shall, after consideration, respond with his or her recommendations. Applications for fees or expenses which, when considered with all prior applications exceed \$7,500 for fees or \$2,500 for expenses in death penalty cases or \$2,500 for fees and \$500 for expenses in non-capital felony cases shall be subject to special scrutiny. After reaching such thresholds, the attorney shall file applications monthly for consideration and approval. In death penalty cases, decisions of the trial court on fees and expenses shall be subject to review by the Supreme Court upon motion by the defendant, the State or the State Public Defender.

Following the pattern of the Capital Post-conviction Counsel legislation and the present Office of Capital Defense Counsel, the State Public Defender should receive salary and benefits equivalent to those of district attorneys. The division directors should be paid at a level of not more than that of district attorney less \$1,000, 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 state offices and contract counsel, with threshold amounts triggering court approval prior to payment.

When there is a split in representation at the trial and appellate levels, in both capital and non-capital proceedings, provisions should be made for transition of counsel. A system should be developed whereby the trial counsel, promptly upon the trial court's ruling on post-trial motions, informs the appropriate division of the conclusion of trial court proceedings. In the alternative, the trial attorney should determine whether the client desires an appeal, and if so, timely file the notice of appeal and notify the appropriate division.

Prosecutors should be required to make a declaration at an early stage of proceedings as to whether the death penalty will be sought. Full time attorneys on the staff of the office would receive no compensation other than salaries set at district attorney level for the director and assistant district attorney for the remaining attorneys. (Caution should be exercised by the director of the Division of Capital Defense Counsel and the director of the Division of Indigent Appeals in the appointment of non-staff counsel in all these cases due to limited budgeting for contract attorneys. This would result in exceeding the budget allowance if contract counsel is used to any great extent.)

It is anticipated that the Supreme Court will establish standards of competence for attorneys representing defendants in capital matters both at trial and on appeal. Those attorneys in the Division of Capital Defense Counsel should be required to meet those standards.

Attachment A

Public Defender Task Force Minutes

MINUTES OF THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Mississippi Court of Appeals *En Banc* Room
Jackson, Mississippi
June 29, 2000

In Attendance: Tom Fortner, Rick Patt, Butch Scipper, Steve Simpson, Justice William Waller, and Sonny White.

The meeting was called to order by Rick Patt, who welcomed those in attendance.

1. The first item of business discussed was how best to obtain the information about the current state of public defender expense in the State. The problem is basically whom do you ask. Most of the expenses come through the circuit court clerks' offices, but some is taken up in justice court costs. Butch Scipper reported that most counties have county administrators. The group agreed that a one-page survey to the chancery clerks and county administrators should be sent out. It was recommended that the survey concentrate on felony indigent defense expenses, excluding death penalty expenses since that area would be studied and addressed by the Office of Capital Post-Conviction Counsel and the Office of Capital Defense Counsel.

A survey should be sent to the Chancery Court Clerks, County Administrators, and Senior Circuit Court Judges. Counties have fixed figures for what they pay contract attorneys and attorneys appointed in conflicts cases. Counties would also have information on associated costs such as experts, DNA tests, etc. (nominal amount if not in capital litigation). Only three counties have budgets for full-time offices, Hinds, Jackson and Washington counties. The survey should identify what the counties are spending now. The Task Force also realized that the needs of the circuit judges should be identified through a study of the types of appointment system that is currently being used in the districts (picked by Board or Judge, rotating list or contract). Judges should state their opinion on how the office setups and expenses should be handled and the percentage of felony cases in which counsel is appointed versus those in which counsel is hired privately. Costs of indigent appeals (filing fees, transcripts, costs, etc), excluding death penalty cases, should be discovered through the questionnaire by determining the amount of the contract or appointed attorney's time is spent on appeals.

The information on the number of felony cases filed should also be obtained for use by the Task Force. Numbers from the Supreme Court Clerks office on how many of the direct appeals are handled by appointed counsel should be obtained as well. The survey would be developed by Rick Patt and sent to the other members for their comment before distribution. A rough time line was established, with the survey going out at the end of the week of July 17th with a return after August 2nd.

2. Sonny White made a motion, seconded by Butch Scipper to elect Justice Waller as the Chairman of the Task Force and have the Circuit Judge representative serve as the Vice-Chair. The motion passed unanimously.

The Task Force agreed that the next meeting would be held at the AOC on Friday, August 11, 2000 at 10:30 a.m. There being no further business, upon a motion and second, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Patt", written in a cursive style.

Rick D. Patt

MINUTES OF THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Mississippi Court of Appeals *En Banc* Room
Jackson, Mississippi
August 24, 2000

In Attendance: Chairman Justice William Waller, Vice-Chairman Judge Isadore Patrick, Judge Dale Harkery, Tom Fortner, Rick Patt, Clyde Hill, and Sonny White.

The meeting was called to order by Chairman Waller, who welcomed Clyde Hill, from the District Attorney's office in the 5th Circuit Court District, to the meeting in the place of Steve Simpson. Mr. Hill is the President-Elect of the Mississippi Prosecutor's Association. Chairman Waller also recognized Jack Pool, the Director of the Supreme Court's Central Legal Office, who would be sitting in on the meeting.

Chief Justice Lenore Prather made a special welcome to the Task Force, and commended the group on its undertaking. After her remarks and departure, the Task Force examined the minutes from the previous meeting. Upon a motion by Sonny White and a second by Rick Patt, the reading of the minutes was waived and they were approved unanimously.

1. The first item of business discussed was the surveys which were sent to the senior circuit judges and the counties concerning indigent defense. Rick Patt presented the findings of the surveys, starting with the survey sent to each circuit district's senior judge. The judges were asked to estimate the percentage of criminal defendants appearing before them who are indigent and require appointed counsel. The circuit judges reported on the type of public defender system which was set up in the counties of their district, and gave their opinion on its effectiveness, their needs and their feelings about having a full-time public defender's office set up in their district to handle felony cases. Rick Patt then discussed the surveys sent to the counties and the reports showing the expenses for non-capital felony indigent defense which are currently being borne by the counties. The Task Force then discussed the information which was shown in the surveys. Rick Patt reported that several counties had still not reported, and that the information would have to be validated before it could be placed in the report.

2. Chairman Waller stated that the Task Force should be able to get its report to the Legislature by the September 29th date, providing information and perhaps making recommendations which could incrementally take some of the financial burden off the counties. He suggested for discussion an idea to perhaps have set up an office of non-death penalty felony appeals, which could be staffed and would be completely separate from the Office of Capital Post-Conviction Counsel. The new Felony Appellate Office could function as an independent unit, or it could be placed in a new Statewide Defender's Office along with the already-created Office of Capital Trial Counsel (which is slated to handle capital trials and presumably capital appeals. Qualifications for counsel could be set by the Supreme Court,

with the Office's Director (or a Statewide Defender) appointed by the Governor for a four-year term. Chairman Waller passed out to the Task Force a draft of such a new Felony Appeals Office, which he worked on with the assistance of Jack Pool. The Task Force then conducted a lengthy discussion on the merits of such a plan, and were in general agreement that the establishment of an office to handle felony appeals would be an idea worth exploring.

3. The Task Force discussed several issues in closing. The group, upon a motion by Chairman Waller and a second by Judge Harkey, recommended that Rick Patt use the AOC to contract with law students to perform research as to the Public Defender Systems which are used in other states. The law students may also be used for stats, surveys and helping to draft the report. Judge Patrick discussed the effect that any full-time office at the felony trial level would have on private attorneys now serving in a contract or appointment capacity, and Tom Fortner reported that the members of the Public Defenders Association are split as to the desirability of having such a system at the trial level.

4. The group then agreed that the next Task Force meeting would be at the AOC on Friday, September 22nd at 1:30 pm. Upon a motion and a second, the meeting was adjourned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rick D. Patt', written in a cursive style.

Rick D. Patt

MINUTES OF THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE
Mississippi Court of Appeals *En Banc* Room
Jackson, Mississippi
September 22, 2000

In Attendance: Chairman Justice William Waller, Vice-Chairman Judge Isadore Patrick, Tom Fortner, Rick Patt, Butch Scipper, and Sonny White. Steve Simpson was unable to be present, but faxed a memo to the group as to his position on proposed legislative recommendations.

The meeting was called to order by Chairman Waller, who recognized Jack Pool, the Director of the Supreme Court's Central Legal Office, who would be sitting in on the meeting. He also introduced Cary Brown, a MC law student, who has been doing research as an AOC law clerk on other states' systems. Chairman Waller directed the group to examine the minutes from the previous meeting. Upon a motion by Sonny White and a second by Judge Patrick, the reading of the minutes was waived and they were approved unanimously.

1. The first item of business discussed was the types of public defender systems which are present in other states. Cary Brown and Rick Patt reported on research, stating that most of the Southeastern states have some form of indigent defense systems set up at a statewide level. Alabama allows a county or counties in a district to appoint a local indigent defense commission, which will then have the authority to select a district defender and supervise the budget and expenses, paid by the state. Arkansas has a Public Defender Commission as an Executive Agency, and establishes policies and standards for the public defender system, funded by the state. The Commission appoints an Executive Director, who oversees the state office and the local defenders. Florida provides state-funded public defenders in the local court districts, overseeing that particular court area. In Georgia, a state council approves and funds local public defender plans in the differing court jurisdictions, managed in accordance with standards set by the Supreme Court. Kentucky employs a state public advocate to approve and fund local plans to provide indigent defense. Louisiana has a district defender board in each judicial district, selecting a method for providing counsel in that district. Funds used by the boards to pay counsel come from a \$17.50 per felony charge imposed upon conviction and from provided state funds. North Carolina handles their appointments on a county or district basis, appointed by the court, with costs to be picked up by the state. North Carolina also has a statewide appellate public defender system, funded exclusively by the state. South Carolina has a commission on indigent defense, which distributes funds generated from a filing fee to counties for representation, and a commission on appellate defense, which sets up an appellate office and provides state funding for felony appeals. Tennessee has a district public defenders conference, whose salary is mostly paid by the state. The conference elects an executive director to coordinate the district defenders, each of whom are appointed by the Governor. Tennessee also has a Death Penalty PCR Commission and Director, funded by the state. Texas does not have a state commission or state office, and appointments are made at the local level by the judges, and the funding is provided by the individual counties. Other