

LEGISLATIVE PROPOSAL
TO THE BOARD OF GOVERNORS
STATE BAR OF GEORGIA

November, 2009

This Proposal is submitted by the Board of Directors (“Board”) of the Georgia Appellate Practice and Educational Resource Center, Inc. (“Resource Center”). The Proposal seeks continued State Bar support for adequate funding for the Resource Center and that such funding be included in the budget of the Judicial Council for the next session of the General Assembly. Given the budget cuts already sustained by the Resource Center and the budget challenges that will face the General Assembly at the next session, State Bar support for the Resource Center is particularly crucial.

I. HISTORICAL BACKGROUND

In 1985 the State Bar of Georgia created the Special Committee to Review the Georgia Attorney Role in Post-Conviction Proceedings (“Special Committee”) to address the lack of competent counsel for indigent, death-sentenced inmates in post-conviction proceedings. The Special Committee documented the need for counsel in such proceedings and assessed the impact of this situation on the quality and administration of justice in state and federal courts. The Special Committee proposed a multi-faceted solution involving the State Bar, the law schools, the

federal courts, and the Supreme Court of Georgia. The Special Committee's report and recommendation were unanimously adopted by the State Bar Board of Governors in January 1986. The State Bar of Georgia was one of the three recipients in the United States of the 1988 Harrison Tweed Award from the American Bar Association for the work of the Special Committee on this project.

The Resource Center was established by the State Bar as a 501(3)(c) non-profit corporation. It was initially housed at the Georgia State University College of Law.¹ It is governed by a Board of Directors of fourteen attorneys from throughout Georgia appointed by the Supreme Court and the State Bar. The Resource Center commenced operation on September 15, 1988. The Resource Center staff is currently comprised of the Executive Director, five (5) staff attorneys, three (3) full-time investigators, two (2) part-time investigators, an Office Manager and a part-time Administrative Assistant. The Resource Center's office space is spartan, our equipment is antiquated and our cases are litigated on a shoe-string budget. The largest portion of our budget is allocated to staff salaries and benefits. Nevertheless, the staff is significantly underpaid and overworked. Staff salaries are considerably less than comparable public interest salaries in the

¹ The Resource Center offers substantial educational benefits to the Georgia State University College of Law, Emory University School of Law, the University of Georgia Law School and the Mercer School of Law through active internship programs.

Atlanta area, including the staff at the Attorney General's Office.² Moreover, the staff of the Resource Center works incredibly long hours under very stressful circumstances related to defending the condemned. The Resource Center is located at 303 Elizabeth Street, NE, Atlanta, Georgia, 30307.

The Resource Center is an integral part of Georgia's death penalty system, is the most efficient and cost effective means to moving the cases to final adjudication,³ and is a necessary safeguard against wrongful execution.⁴

² The figures below show the comparison of Center staff attorney salaries with those of comparable public interest offices in the Atlanta area (based upon five or more years experience):

Resource Center	\$50,000 - 70,000
Fulton County Public Defender	\$65,000 - 80,000
Georgia Capital Defender	\$80,000 - 90,000
Fulton County District Attorney's Office	\$63,400 - 93,000
Office of the Attorney General	\$58,000 - 88,000

³ A performance audit requested by the Georgia Senate Appropriations Committee and conducted by the Department of Audits in 2005 found that Center attorneys handled more cases and expended less money per case than similar organizations providing post-conviction representation to death sentenced prisoners in other states.

⁴ Since 1996, 28 death penalty cases have resulted in post-conviction reversals and only two of those reversals have resulted in a death sentence – 15 of them have already had a life sentence imposed, two died of natural causes, two have been resentenced to death and the other 9 are still pending (2 of those cases involves juveniles who cannot be resentenced to death). During that same period, 25 death sentences have been carried out. The significance of this rate of error is obvious – proving that the system can only be fundamentally fair if there is a Resource Center to provide checks and balances to the system in state habeas review.

For the past twenty-one (21) years, the State Bar has actively supported this legislative proposal. The formal and active support for this legislative proposal by the State Bar is crucial to obtain continued funding from the State.

II. SPECIFIC LEGISLATION

No specific legislation is pending, but the Resource Center funding request will be included in the appropriations bill of the Georgia Legislature.

In the last ten years, the Resource Center has taken on an unprecedented number of capital habeas corpus cases – a forty percent caseload increase – and has moved from a resource center model to a direct representation model.⁵ In addition to this substantial increase in caseload, the cases are moving through post-conviction proceedings at an unprecedented faster pace.⁶ Although the Resource Center could ethically and fiscally decline to take any further cases because of a caseload conflict, the Center has continued to shoulder the responsibility of representing death sentenced inmates in the absence of any right to counsel. Since

⁵ The shift to a direct representation model was necessitated by the inability to recruit pro bono counsel for the increasing number of clients in habeas proceedings.

⁶ Since FY2007, there has been an unprecedented increase in the number of state capital habeas evidentiary hearings – FY 2007- twelve (12); FY 2008 - ten (10); and FY 2009 - nine (9); and the trend continues. Historically, there have been an average of only four (4) state capital habeas evidentiary hearings per fiscal year. The incredible work by the staff of the Resource Center has been a significant factor in this more effective and efficient system.

the *Gibson*⁷ decision, the Resource Center staff has been confronted with a Hobson's choice – continue to take additional cases despite the lack of resources to adequately litigate the cases or decline the cases and stand by while death sentenced inmates are forced to proceed *pro se*.⁸ The Resource Center has ethically felt compelled to undertake the burden of ensuring representation for all death sentenced inmates in Georgia.

Despite an overwhelming caseload, the General Assembly cut the Resource Center's funding by 27.5% for FY 2009 – from \$800,000 to \$580,000. During the fiscal year, the Governor ordered budget cuts which effectively reduced the grant to \$528,963. For FY 2010, the state again provided a grant of \$580,000, but the Governor has again ordered budget cuts which have resulted in the effective

⁷ *Gibson v. Turpin*, 270 Ga. 855, 513 S.E.2d 186 (1999). By the slimmest of margins, the Supreme Court of Georgia held that death sentenced inmates had no constitutional right to counsel in state habeas corpus proceedings. The court did note however that a statute providing for state-funded counsel might be a good policy but that absent legislative enactment of such a provision, state-funded counsel was not constitutionally compelled.

⁸ Habeas courts have frequently responded to the Resource Center's pleas for additional time to prepare a new case with the suggestion that the Resource Center should withdraw because of a caseload conflict and allow the death sentenced inmate to proceed *pro se*. See *Palmer v. Head*, Case No. 2000-V-474, Superior Court of Butts County, Transcript of January 9, 2001 hearing at 13 (“If you want to get out, though, go ahead and get out, and let [Mr. Palmer] be the one who confers with [Assistant Attorney General] if you are going to”). Mr. Palmer is mentally retarded. The Center took on the representation of Mr. Palmer. The habeas court granted Mr. Palmer a new trial based upon State misconduct and ineffective assistance of counsel and the Supreme Court upheld the grant of relief. *Schofield v. Palmer*, 621 S.E.2d 726 (Ga. 2005).

reduction of the grant to \$551,000, with the prospect of deeper cuts to come. Although the gap in state funding for FY 2009 was generously filled by the Georgia Bar Foundation by increasing its grant to the Center and making up the \$220,000 cut by the General Assembly,⁹ the Foundation's revenues were devastated by the economic downturn, and their grant to the Center was reduced for FY 2010 by roughly 70 percent to \$249,700. The State Bar also provided a generous grant of \$100,000 for FY 2010. The Center's budget for FY 2010 has also been supported by monies accumulated through billing the federal courts for work performed in federal habeas cases over FY 2004-09.¹⁰

The fiscal outlook for FY 2011 is not good. Federal billing revenues, estimated at approximately \$100,000, will represent in FY 2011 far less of a proportion of the Center's budget than in FY 2010. The continuing economic downturn, moreover, means that the Georgia Bar Foundation may be unable to provide any grant to the Center in FY 2011. Additionally, the State Bar grant of \$100,000, was intended as a one-time grant, and may be unavailable in FY 2011.

⁹ In FY 2009, the Bar Foundation awarded the Center a grant for \$792,000.

¹⁰ This amount totaled approximately \$300,000, an amount that is unlikely to be replicated in subsequent fiscal years, because it represented accumulated billing for work performed over five fiscal years. Federal billing for FY 2011 is anticipated to fall far short of the amount budgeted for FY 2010.

To continue to provide the same level of services to the cases in, or about to enter, state habeas corpus proceedings, the Resource Center needs a state grant of \$1,129,700 for FY 2010.

Endorsement of this proposal is consistent with the purposes of the State Bar of Georgia. Members of the bar are uniquely qualified to analyze the technical and public policy issues inherent in this proposal and can fulfill a duty of public service by examining these issues and making a statement to the General Assembly. Endorsement of these proposals will also improve the administration of justice in appellate and post-conviction capital proceedings in Georgia.

III. SUMMARY OF EXISTING LAW

We do not believe there is any existing law applicable to this proposal.

IV. PROPONENTS OR OPPONENTS

The State Bar of Georgia has supported full funding for the Resource Center since its inception in 1986. The Georgia Supreme Court has also supported funding for the Resource Center, as has the Board of Governors and the Judicial Council of Georgia.

There are no known opponents of this proposal.

V. OTHER COMMITTEES AND SECTIONS

A copy of this proposal will be sent to the following other committees or sections which may have an interest in the legislation: the Advisory Committee on Legislation; the Special Committee on Post-Conviction Capital Representation; the Criminal Law Section; and the Individual Rights Section of the State Bar. These committees and sections have previously supported funding for the Resource Center.

VI. CONCLUSION

For the above-stated reasons, the Board of Directors of the Georgia Resource Center petitions the State Bar of Georgia for endorsement of continuation funding of \$1,129,700 for the Resource Center and that such funding be placed in the budget of the Judicial Council for the next session of the General Assembly.

Submitted: November 23, 2009.

Respectfully submitted,

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Executive Director

Robert B. Remar
Chair/President of the Board of Directors