

MISSISSIPPI
PUBLIC DEFENDER
TASK FORCE



REPORT
TO
THE MISSISSIPPI LEGISLATURE

JANUARY 31, 2008

Mississippi Public Defenders Task Force
Report to the Mississippi State Legislature
January 31, 2008

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LETTER
FROM THE
CHAIRMAN OF THE PUBLIC DEFENDER TASK FORCE

January 31, 2008

The Honorable Phil Bryant
Distinguished Members of the Senate
The Honorable William J. McCoy
Distinguished Members of the House
New Capitol
Jackson, Mississippi 39201

Mesdames and Messieurs:

The Public Defenders Task Force continues to encourage productive conversations between prosecutors and defenders as the Task Force considers possible legislative measures that will assist in the creation of an adequately funded and well-trained public defender system. The Task Force is currently meeting to discuss what the next steps of the Task Force will be in light of the legislation the Task Force successfully submitted and saw passed by the Mississippi Legislature in 2007, including the extension of the repealer of the Task Force by four years; the inclusion of a representative from the Mississippi Bar and a representative from the Magnolia Bar to the Task Force; and approval of a public defender training component. Possible legislation to be submitted to the 2008 Legislature is currently being considered by the Task Force and its Legislative Subcommittee. The Task Force is grateful to the Mississippi Legislature for its continued support of the Task Force as it continues its work.

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,

/s/ James E. Graves, Jr.

James E. Graves, Jr., Chairman
Mississippi Public Defender Task Force

JEG/dd

STATUTORY CREATION

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 thirteen (13) 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;
- A representative of the Magnolia Bar Association;
- A representative of The Mississippi Bar.

MEMBERSHIP OF THE TASK FORCE

Mississippi Public Defender Task Force 2008 Membership

Chairman

Justice James E. Graves, Jr.
Mississippi Supreme Court
P.O. Box 117
Jackson, MS 39205

Vice-Chairman

Judge William Chapman, III
Conference of Circuit Judges
P.O. Box 1626
Canton, MS 39046

Senator Alan Nunnelee

Chairman Senate Appropriations Committee
P.O. Box 1018 (Capitol)
Jackson, MS 39215-1018

Senator Gray Tollison

Senate Judiciary Committee
P.O. Box 1018 (Capitol)
Jackson, MS 39215

Representative Edward Blackmon, Jr.

House Judiciary En Banc Committee
P.O. Box 1018 (Capitol)
Jackson, MS 39215-1018

Representative Johnny W. Stringer

Chairman House Appropriations Committee
P. O. Box 1018 (Capitol)
Jackson, MS 39215-1018

Chris Klotz

The Klotz Law Firm
1060 E. County Line Road
Suite 3A-192
Ridgeland, MS 39157

Ben Creekmore

President, MS Prosecutors Association
Office of the District Attorney
P.O. Box 1635
Batesville, MS 38606

Kevin Lackey

Administrative Office of Courts
P.O. Box 117
Jackson, MS 39205

Marvin L. "Sonny" White

MS Attorney General
P.O. Box 220
Jackson, MS 39205-0220

T.H. "Butch" Scipper

MS Association of Supervisors
Quitman County Chancery Clerk
230 Chestnut
Marks, MS 38646

Staff Support

David Dykes
Project Manager
Administrative Office of Courts
P. O. Box 117
Jackson, MS 39205

ATTACHMENT "A"

PUBLIC DEFENDER TASK FORCE MINUTES

MISSISSIPPI PUBLIC DEFENDER TASK FORCE

MINUTES

SEPTEMBER 25, 2007

MISSISSIPPI BAR CENTER

10:00 A.M.

Members Present:

Justice James E. Graves, Jr., Chairman

Judge William Chapman, III, Conference of Circuit Judges, Co-Chairman

T.H. "Butch" Scipper, MS Association of Supervisors

Chris Klotz, MS Public Defender Association

Jennifer Riley-Collins, Magnolia Bar

Fred L. Banks, Jr., Mississippi Bar

Others Present:

Joel Yelverton, MS Association of Supervisors

Louwlynn V. Williams, MS Office of Capital Post Conviction Counsel

Beverly P. Kraft, Administrative Office of Courts

George Holmes, Office of Indigent Appeals

Andre deGruy, MS Office of Capital Defense Counsel

Glenn Swartzfager, MS Office of Indigent Appeals

Ramel Cotton, Magnolia Bar

David Dykes, Administrative Office of Courts

Members Absent:

Rep. Edward Blackmon, Jr., MS House Judiciary En Banc Committee

Ben Creekmore, MS Prosecutors Association

Senator Gray Tollison, MS Senate Judiciary Committee

Rep. Johnny Stringer, MS House Appropriations Committee

Senator Carl "Jack" Gordon, Jr., MS Senate Appropriations Committee

Kevin Lackey, Administrative Office of Courts

Marvin "Sonny" White, MS Attorney General's Office

Call to Order

The meeting of the Mississippi Public Defenders Task Force was called to order at 10:06 a.m. by Justice James Graves, Chairman. Justice Graves noted the addition of two new members to Task Force: Jennifer Riley-Collins as the Magnolia Bar's representative and Fred Banks, Jr. as the Mississippi Bar's representative.

Old Business

Minutes

The minutes from the November 9, 2006 meeting were approved. The Task Force also discussed whether items could be voted upon without a majority of members present. After recognizing that the Task Force has conducted business with as few as five members in the past, it was agreed that the meeting could proceed.

New Business

A. Legislative Update

Chris Klotz began the meeting by reminding the Task Force that three of its four legislative goals had been achieved in the latest legislative session, including the extension of the repealer of the Task Force by four years; the inclusion of a representative from the Mississippi Bar and a representative from the Magnolia Bar to the Task Force; and approval of a public defender training component. After some discussion concerning the legislation, Justice Graves commended the Task Force for all it had accomplished last year. He also expressed his belief that having representatives from the Mississippi Bar and the Magnolia Bar would be a significant and positive addition to the Task Force. Justice Graves also expressed his approval of the idea of having funding for public defenders that was equal to that being set aside for prosecutors.

Justice Graves then introduced Jennifer Riley-Collins as the Magnolia Bar's representative to the Task Force and Fred L. Banks, Jr. as the Mississippi Bar's representative to the Task Force. Ms. Riley-Collins expressed her anticipation of finding ways to have the Task Force assist in youth court defense.

Chris Klotz mentioned to the group how proud he was that the 2007 legislation submitted by the Task Force was created in conjunction with the Mississippi Prosecutors Association. He felt that such collaboration between prosecutors and public defenders was an historic step and felt that any legislation in the future would benefit from the significant progress made last year. Mr. Klotz encouraged both the public defenders and prosecutors to work together so that the Task Force can draft legislation that is responsive to the desires and concerns of both groups.

B. New Legislation

Concerning possible legislation for the next session, Mr. Klotz stated that he would meet with the Public Defenders Association and listen to their concerns and suggestions for future

legislation. Mr. Klotz was hopeful that the members of the Prosecutors Association could do the same, and Mr. Klotz and Ben Creekmore, the new president of the Mississippi Prosecutors Association, could meet with the Task Force's legislative subcommittee. Justice Graves suggested setting a deadline for a recommendation to the Task Force by the legislative subcommittee.

Some members suggested giving the prosecutors a deadline for submitting suggestions before the legislative subcommittee met, but the Task Force eventually decided that it would be more advisable to set the meeting of the legislative subcommittee and create a deadline for submission of proposed legislation by the legislative subcommittee to the Task Force. Judge Chapman stated his opinion that the earliest possible date for a report from the legislative subcommittee would be the second week of December, and he also stated that it might take more than one meeting to get everyone on the same page.

Chapman informed the Task Force that the circuit judges are going to want to retain control of appointing chief public defenders. Concerning possible legislation, Judge Chapman stated that the best chance of getting something passed is to mirror what prosecutors are receiving with some minor adjustments.

Mr. Klotz suggested December 14, 2007, as the deadline for the legislative subcommittee to meet and begin work on suggested legislation.

Justice Graves offered to call Ben Creekmore and let him know what the Task Force had discussed. It was estimated that the deadline for introduction of a bill to the legislature would be February 25, 2008.

Andre DeGruy then gave the Task Force an update on the public defender system, including the number of complaints filed against public defenders. He informed the Task Force that 95% of the complaints from clients in criminal matter concerned public defenders. He also stated that his office received a grant to put on a death penalty defense training program. Mr. Ramel Cotton offered his opinion that there is too much county to county variation in the administration and oversight of the public defender system.

Ms. Riley-Collins echoed Mr. Ramel's concerns and expressed her desire to see uniform oversight of the public defender systems in all counties. Mr. Klotz stated that the Task Force needs to work with circuit judges and said that many people have expressed concern that sometimes circuit judges don't appoint the best attorneys for the public defender positions. Judge Chapman stated that some county systems do work, and while he believes that some programs need improvement, he doesn't feel that the system is broken statewide. Justice Graves wondered whether there is any accountability in the current system. Mr. Banks wondered whether there was a way to monitor the public defender system. Justice Graves reported that there was currently no statewide system of fact collection for the system

because the AOC doesn't receive cover sheets in criminal cases with that information.

Next Meeting

The Task Force agreed that its next meeting should be on January 11th, 2008 at 10:00 a.m.

Adjournment

There being no further business, the Mississippi Public Defender Task Force adjourned at 11:17 p.m.

Respectfully submitted by:

/s/ David Dykes

David Dykes
Project Manager, Administrative Office of Courts
Recorder, MS Public Defender Task Force

/s/ James E. Graves, Jr.

Hon. James E. Graves, Jr., Justice
Supreme Court of Mississippi
Chairman, MS Public Defender Task Force

January 11, 2008

Date Approved

MISSISSIPPI PUBLIC DEFENDER TASK FORCE
MINUTES
JANUARY 11, 2008
COURT OF APPEALS CONFERENCE ROOM
10:00 A.M.

Members Present:

Justice James E. Graves, Jr., Chairman
Judge William Chapman, III, Conference of Circuit Judges, Co-Chairman
Chris Klotz, MS Public Defender Association
Jennifer Riley-Collins, Magnolia Bar
Kevin Lackey, Administrative Office of Courts
Marvin "Sonny" White, MS Attorney General's Office

Others Present:

Joel Yelverton, MS Association of Supervisors
Steve Gray, MS Association of Supervisors
Beverly P. Kraft, Administrative Office of Courts
Andre deGruy, MS Office of Capital Defense Counsel
Bear Atwood, Mississippi Youth Justice Project
David Dykes, Administrative Office of Courts

Members Absent:

Rep. Edward Blackmon, Jr., MS House Judiciary En Banc Committee
Fred L. Banks, Jr., Mississippi Bar
Ben Creekmore, MS Prosecutors Association
T.H. "Butch" Scipper, MS Association of Supervisors
Senator Gray Tollison, MS Senate Judiciary Committee
Rep. Johnny Stringer, MS House Appropriations Committee
Senator Carl "Jack" Gordon, Jr., MS Senate Appropriations Committee

Call to Order

The meeting of the Mississippi Public Defenders Task Force was called to order at 10:03 a.m. by Justice James Graves, Chairman. Justice Graves recognized that some members of the Task Force would be changing due to assignments of committee seats in the Mississippi Senate and House of Representatives.

Old Business

Minutes

The minutes from the September 25, 2007 meeting were approved. The Task Force also discussed whether items could be voted upon without a majority of members present. After recognizing that the Task Force has conducted business with as few as five members in the past, it was agreed that the meeting could proceed.

New Business

Legislative Subcommittee Report and New Legislation

I. Public Defender Training

Christ Klotz gave a report to the Task Force concerning the work and recommendations of the Legislative Subcommittee. Mr. Klotz referenced the Subcommittee's report from its December 13, 2007 meeting.

Concerning the Public Defender Training Bill, Mr. Klotz reminded the Task Force that the Bill provided for collection of monies through the Office of Indigent Appeals to be used for public defender training. Mr. Klotz also noted that the Office of Indigent Appeals had done a good job already in its training of public defenders at a recent conference. From the income reports, it was noted that the amount of money collected was smaller than what was originally anticipated. The reason for the shortfall was the absence of a provision in the public defender training bill of a filing fee of an additional \$.50 that should have been included to achieve parity with funding for prosecutor training. Mr. Klotz reported the Subcommittee's recommendation to the Task Force to offer an amendment to the public defender training statute that would address the non-inclusion of the alternative stream of revenue.

Justice Graves expressed some confusion over the report's references to current law and proposed legislation and whether the issue was one of finding a new source of funding or one of accessing funds that are already coming in. Mr. Klotz stated that the proposed legislation would request an additional \$.50 be added to the existing \$2.00 civil filing fee under the applicable statute for purposes of helping to fund the Public Defender Training Bill. Mr. Klotz was very clear that the proposed legislation would in no way take away any percentage of money presently being allocated to other groups from the \$2.00 assessment for each civil filing. Instead, the proposal of the Subcommittee was to draft legislation that would add more funding by increasing the assessment and was not a request to reconfigure current distributions of the existing assessment.

II. Task Force Planning Goals for 2008

Mr. Klotz also informed the Task Force that the Subcommittee initially felt that there would not be adequate time to create statewide legislation to be presented to the Legislature, but further discussions seemed to have indicated that it might be feasible to draft a single bill encompassing some goals of the Subcommittee and the Task Force, like pilot programs. The Task Force was given a proposed bill drafted by Andre de Gruy.

III. Delivery of Services to Indigent Youth

The Task Force next discussed the delivery of services to indigent youths, and Mr. Klotz asked Jennifer Riley-Collins to lead in the Subcommittee's report on that topic. Ms. Riley-Collins mentioned that she had offered some suggested amendments to Mr. de Gruy's proposed legislation so as to include a juvenile defender in each of the pilot programs. A copy of the legislation with the proposed amendments of Ms. Riley-Collins was distributed to the Task Force.

Mr. de Gruy mentioned that the reason his bill only included felony cases was because of the need to take incremental steps in the pursuit of a statewide public defender system that could not be created all at once. He also wanted to be clear that he was not opposed to juvenile defenders but wanted to make sure the appropriate amount of change was requested at the appropriate time. Mr. Klotz, also supportive of indigent defense of alleged juvenile offenders, expressed his concern that since the goal of the bill is to create parity with the prosecutors that allotting one defender solely for juveniles would mean a loss of one defender for defense of adult offenders.

Judge Chapman, stating that he had little knowledge of the prosecution and defense of juvenile defenders, suggested adding a youth court judge or county court judge to the Task Force who could better comment on the proposed changes brought by Ms. Riley-Collins on behalf of the judiciary. Ms. Riley-Collins expressed her belief that her proposal was actually in line with the original proposed legislation and expounded upon her belief in the necessity of providing for juvenile defenders in the pilot programs. Marvin White mentioned that absolute parity might not be supported by the prosecutors since prosecutors have to handle matters other than prosecution of indigent defendants as part of his or her job. Judge Chapman pointed out, though, that in his district the public defenders carry very heavy loads and have conflicts issues that prosecutors don't have. Judge Chapman believed the fair thing to do was to have parity.

Kevin Lackey stated that since the goal was to eventually lead to a statewide system then the Task Force should make sure the pilot program will work and not become unmanageable. Mr. Lackey wondered about the costs associated with the program and wondered what additional costs would be incurred by including the juvenile component. Mr. de Gruy

pointed out that the maximum number of pilot programs is five, but there is no guarantee that there will be enough interest from judges to actually have five programs. Also, based on size of districts, there will need to be a mix of small and large districts to insure that funding is available for all five pilot programs or there will have to be fewer districts with the pilot programs because of funding. Mr. Lackey also asked for some clarification on the financial aspects of the pilot programs and inquired as to whether those employed as attorneys and staff would be state workers, county workers, or independent contractors. Mr. de Gruy stated that all employees would be state employees.

The Task Force continued to discuss whether or not the pilot program proposed by the legislation drafted should include a juvenile defender component. There was some concern that including the juvenile defender component would not be mirroring the offices of prosecutors as originally intended.

There was another discussion of whether having one defender in the pilot program designated to defending juveniles might compromise the idea of parity by taking away a defender that was intended to mirror the number of prosecutors prosecuting adults. Justice Graves mentioned that prosecutors might see the assignment of one juvenile defender as parity since they have responsibilities other than the prosecution of indigent defendants. Mr. Klotz pointed out that public defenders have responsibilities that prosecutors don't have, such as dealing with a large pre-indictment docket, investigating cases with no police assistance, representing defendants at bond hearings and extradition hearings, etc.

After more discussion, the Task Force voted that it was appropriate to present a bill to the Legislature in 2008, but there remained a question as to whether the bill should be, at least in principle, what Andre de Gruy drafted or his draft plus the inclusion of the juvenile defender components proposed by Jennifer Riley-Collins.

Judge Chapman wondered if the Chair of the Task Force should adjourn the meeting of the whole Task Force and direct that the Legislative Subcommittee convene in order to reconcile the recommendations of Mr. de Gruy and Ms. Riley-Collins, as well as other concerns expressed. Justice Graves thought it was appropriate to first have the Task Force decide whether it wanted the two drafts merged or if it simply wanted to proceed without the youth court component.

The Task Force then voted on whether the language concerning a juvenile defender component should be included in the legislation to be drafted and proposed by the Task Force. The Task Force agreed to include the juvenile defender component with votes for inclusion of the component by Jennifer Riley-Collins, Chris Klotz, and Kevin Lackey. Marvin "Sonny" White and Judge Chapman voted against inclusion of the component, and

Justice Graves abstained from the voting.

The Task Force then agreed that the Legislative Subcommittee should meet to draft legislation in light of the Task Force's comments and concerns as soon as possible. The Subcommittee could then take a vote of the Subcommittee and the full Task Force to determine if there is the requisite support of the proposed legislation to send it to the Legislature. Some Subcommittee members agreed to stay after the Task Force meeting adjourned to discuss the proposed legislation.

Next Meeting

The Task Force agreed that its next meeting should be on March 7, 2008 at 10:00 a.m. A location will be announced once arrangements are made.

Adjournment

There being no further business, the Mississippi Public Defender Task Force adjourned at 11:34 p.m.

After the meeting adjourned, Justice Graves phoned Judge Chapman, who had not yet left the Court of Appeals Conference Room, to reconvene the meeting and take a formal vote on whether or not the Task Force approved the proposal of drafting legislation that would add \$.50 to the \$2.00 civil filing fee referenced earlier in the minutes for the purposes of public defender training. Judge Chapman made a motion to approve that \$.50 addition. Chris Klotz seconded the motion. Judge Chapman, Chris Klotz, Jennifer Riley-Collins, and Justice Graves voted to approve the motion.

Respectfully submitted by:

David Dykes, Project Manager, Administrative Office of Courts
Recorder, MS Public Defender Task Force

Hon. James E. Graves, Jr., Justice,
Supreme Court of Mississippi
Chairman, MS Public Defender Task Force

Date Approved