



STATE OF TENNESSEE
OFFICE OF THE POST-CONVICTION DEFENDER
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MEMORANDUM

TO: Honorable Members of Joint Judiciary and Government Subcommittee
of the Government Operations Committee

FROM: Justyna G. Scalpone, Post-Conviction Defender JGS

DATE: August 1, 2017

SUBJECT: **Answers to Sunset Public Hearing Questions for
Post-Conviction Defender Oversight Commission**

1. **Provide a brief introduction to the Post-Conviction Defender Oversight Commission, including information about its purpose, statutory duties, staff, and administrative attachment. Also, describe the Office of the Post-Conviction Defender, its activities, and its staffing.**

**Statutory Purpose of the Post-Conviction Defender Oversight Commission and the
Office of the Post-Conviction Defender**

The Office of the Post-Conviction Defender (OPCD) and the Post-Conviction Defender Oversight Commission¹ (Commission) were established by the legislature in 1995. T.C.A. § 40-30-201 *et seq.* The purpose of the OPCD and the Commission is “to provide for the representation of any person convicted and sentenced to death who is unable to secure counsel due to indigence, and that legal proceedings to challenge such conviction and sentence may be commenced in a timely manner and so as to assure the people of this state that the judgments of its courts may be regarded with the finality to which they are entitled in the interests of justice.” T.C.A. § 40-30-202 (a).

In fulfilling their mission, the OPCD and the Commission must “be consistent with professional standards and not compromise independent professional judgment or create a professional or institutional conflict of interest, appearance of impropriety, breach of

¹ The Commission was originally created as the Post-Conviction Defender Commission, but its name and duties were amended by 2011 Tennessee Law Pub. Ch. 414.

attorney-client confidence or secret or other violation of the Tennessee Rules of Professional Conduct or the Tennessee Code of Judicial Conduct.” T.C.A. § 40-30-202(a). The agency serves this purpose by providing high quality legal representation to indigent death sentenced inmates to ensure that Tennessee’s death penalty is not carried out against a person who was not guilty of the offense for which he or she had been convicted, ineligible for a sentence of death, or convicted or sentenced in violation of the Tennessee or United States Constitution.

Staff, Duties, and Activities of the OPCD

The Post-Conviction Defender “appoint[s], employe[e]s, and establish[es], in numbers as the post-conviction defender determines,” the office staff. T.C.A. § 40-30-208. The current OPCD staff is composed of nine attorneys, including the Post-Conviction Defender, four investigators, three paralegals, a document management and paralegal services director, a fiscal director, and a human resources assistant.

The statutory duties of the OPCD are set out in T.C.A. § 40-30-206 and are as follows:

- (a) represent indigent death sentenced inmates in “instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in state court...”
- (b) represent a death sentenced inmate on direct appeal in matters in which the state court has determined that competent counsel is otherwise unavailable.
- (c) represent indigent death sentenced inmates in collateral proceedings in the federal courts provided that compensation for representation and expenses comes from non-State of Tennessee resources.
- (d)(1) maintain materials and briefs for use by public defenders and private counsel representing indigents in capital cases, (2) provide continuing legal education for public defenders and private counsel representing indigents in capital cases, (3) provide non-case specific consulting services to attorneys representing defendants in capital cases, (4) recruit qualified private attorneys willing to provide representation in death penalty proceedings.
- (e) Where the post-conviction defender determines that it is in the interest of justice, represent death sentenced inmates during clemency proceedings before the Tennessee board of probation and parole and the governor and in proceedings to determine whether the death sentenced inmate is competent to be executed.

The majority of the work of the office staff involves direct representation of death-sentenced inmates in post-conviction proceedings. These proceedings include investigation and original adjudication of post-conviction claims in trial and appellate courts, as well as re-opening of post-conviction proceedings based on new evidence or law.

The cases handled by the OPCD are much more complex and time-consuming to litigate than a typical criminal case. Generally, capital cases require that the jury not only decide the defendant's guilt, but also review his or her life history in order to determine whether circumstances exist which mitigate their actions and weigh against receiving the ultimate punishment of death for the crime they committed. The purpose of capital post-conviction review is to analyze whether mistakes of constitutional magnitude were committed during this process, rendering the resulting conviction or sentence unreliable. To properly assess the existence of constitutional violations, the post-conviction team must fully investigate the offense, the client's social history, the performance of the previous defense team and the prosecution, as well as the decisions by the trier of fact. Such investigation involves collecting and digesting thousands of documents and interviewing a multitude of witnesses. It is a time-consuming process, which requires comprehensive knowledge of the relevant law and procedure, skills in effectively communicating with people that may be intellectually disabled, mentally ill, or severely traumatized, as well as a high level of written and oral advocacy.

The office is also expecting to be handling clemency proceedings when the State pursues new executions. OPCD's remaining work consists of training capital attorneys and serving as non-case-specific resource, as well as recruiting new capital counsel when needed. These additional duties will be discussed in more detail in response to Question 8.

Duties of the Commission

The nine-member Commission serves *pro bono* and has no additional staff or administrative attachment other than the OPCD. T.C.A. § 40-30-203. The Commission is "strictly administrative in nature" and "oversee[s] budget, staffing and caseload concerns." T.C.A. § 40-30-202 (b). Commission members are not allowed to "advise, consult or otherwise directly assist the post-conviction defender or the post-conviction defender's staff in providing legal representation in [their] cases." T.C.A. § 40-30-202 (b).

The Commission's specifically enumerated statutory duties are: (1) designating one member as "the commission chair;" (2) holding meetings "in compliance with title 8, chapter 44;" (3) appointing "a qualified attorney to the office of the post-conviction defender;" and (4) "prepar[ing] an annual budget for the office of the post-conviction defender, administer[ing] the funds made available to the office, and oversee[ing] the expenditure of the funds." T.C.A. § 40-30-204.

2. **Provide a list of current members of the commission and describe how membership complies with Section 40-30-203, *Tennessee Code Annotated*. Who appoints members? Are there any vacancies on the commission? If so, what steps have been taken to fill the vacancies?**

Appointment Mechanism and Composition Requirements of the Commission

The nine-member Commission is comprised of:

- (1) Three members appointed by the Governor;

- (2) Three members appointed by the Speaker of the Senate; and
- (3) Three members appointed by the Speaker of the House of Representatives

“In making these appointments, the appointing authorities shall strive to ensure that the membership of the commission appropriately reflects the racial and geographic diversity of the state.” T.C.A. § 40-30-203. In addition, Commission members are not required to be attorneys, but if they are, they “may not be a current district attorney general or assistant district attorney general, a current public defender or assistant public defender, or a sitting judge.” T.C.A. § 40-30-203.

Present Status of the Commission

The current members of the Commission are:

Rebble Stewart Johnson, Commission Chair, appointed by Speaker of the House Harwell, term ends 08/31/19, lives in Bradley County;

Prince C. Chambliss, appointed by Governor Haslam, term ends 06/30/19, lives in Shelby County;

Tyler Dewitt, appointed by Governor Haslam, term ends 06/30/21, lives in Shelby County;

Sharon Tipton Massey, appointed by Speaker of the House Harwell, term ends 08/31/19, lives in Montgomery County;

Gilbert Wayne McCarter, II appointed by former Speaker of the Senate Ramsey, term ends 08/31/18, lives in Rutherford County;

Gene Scott, Jr., appointed by former Speaker of the Senate Ramsey, term ends 08/31/18, lives in Washington County;

Neisha Wolfe, appointed by Governor Haslam, term ends 06/30/21, lives in Montgomery County;

Two vacancies exist on the Commission. These appointments belong to the Speaker of the Senate and to the Speaker of the House. The Post-Conviction Defender has written to Speaker Harwell twice to remind her about the vacancy and has also spoken to her aide once. The Post-Conviction Defender wrote to the Speaker of the Senate McNally once about his vacancy, which has been pending only since May.

The Commission represents five counties: two members from Shelby (West Grand Division), two from Montgomery and one from Rutherford counties (Middle Grand Division), as well as one from Bradley and one from Washington (East Grand Division). Only two of the seven members are women, and only one member is non-Caucasian. One member of the Commission has experience as a capital defense attorney and three others have significant criminal defense experience.

3. How many other states have similar commissions?

Seventeen (17) of the 31 death penalty states have state-funded offices which provide representation to death-sentenced inmates in state post-conviction proceedings. Eleven (11) of those offices have commissions. The majority of the commissions oversee a variety of services provided by the state to indigent defendants, including capital post-conviction. One (1) of the 17 states has a state-wide commission which oversees other indigent defense services, but not post-conviction.

4. How many times did the commission meet in fiscal years 2016 and 2017? How many members were present at each meeting?

The Commission met three times in fiscal year 2016. At the first meeting, seven members attended, one was absent, and there was one vacant position. At the second meeting, six members were in attendance, one was absent, and two positions were vacant. All seven members attended the third meeting (with two vacancies).

Two meetings were held in fiscal year 2017. At the first meeting, six members attended, one was absent and there were two vacant positions. At the second meeting, four members were in attendance, three were absent, and two positions remained vacant.

5. What per diem or travel reimbursements do members receive? How much was paid to commission members during fiscal years 2016 and 2017?

Members are allowed to request travel reimbursements in accordance with state travel regulations issued by the Department of Finance and Administration. In fiscal year 2016, four members were reimbursed a total of \$1,975.68 in travel costs. In fiscal year 2017, one member was reimbursed \$1,130.74 in travel costs.

6. Is the commission subject to Sunshine law requirements (Section 8-44-101 et. seq., Tennessee Code Annotated) for public notice of meetings, prompt and full recording of minutes, and public access to minutes? If so, what procedures does the commission have for informing the public of its meetings and making its minutes available to the public?

The commission is subject to Sunshine law requirements. *See* Tenn. Code Ann. § 40-30-204(b). Public notices of meetings are posted on the agency's website (www.tnpcdo.net) and printed copies of the public notices are posted by the human resources assistant employed by the Office of the Post-Conviction Defender in Legislative Plaza and, on occasion, in the Wm. R. Snodgrass Tennessee Tower in Nashville, the U.S. Post Office at the Arcade Station in Nashville, and in various other public places. The agency's administrative staff also records the minutes of each meeting which are subsequently approved by the Commission. Minutes of all meetings are available for public inspection and/or copying according to the Tennessee Open Records Act (Tenn. Code Ann. § 10-7-5).

7. What were the commission’s and the Office of the Post-Conviction Defender’s revenues and expenditures for fiscal years 2016 and 2017?

Neither the Commission nor the OPCD had revenues during fiscal years 2016 and 2017. All funding for the Commission and the agency is provided by State appropriation.

Total expenditures in Fiscal Year 2015-16 were \$2,060,291 and in Fiscal Year 2016-17 were \$2,128,580:

Category Code	Expenditures FY 2016	Expenditures FY 2017
701	\$1,240,127	\$1,315,469
702	442,822	425,887
703	49,520	60,328
704	6,815	7,959
706	9,124	8,803
708	30,934	74,354
709	41,213	16,868
710	178,561	170,707
714	3,200	3,200
721	11,391	12,842
722	14,027	5,222
725	32,557	26,941
Total	\$2,060,291	\$2,128,580

8. Describe the extent of the commission’s oversight of the Office of the Post-Conviction Defender. Also, describe the Post-Conviction Defender’s activities in carrying out the responsibilities assigned in Section 40-30-206(d), *Tennessee Code Annotated*.

Extent of Commission oversight:

The Commission fulfills its duty of overseeing the OPCD’s budget by reviewing the current status of expenditures during every Commission meeting. In addition, the Commission reviews the OPCD’s annual budget request prepared by the fiscal director prior to its submission. The Commission also has a three-member Audit Committee, which in detail discusses allotment of funds between the categories within the budget and annually reviews the agency’s risk assessment. Finally, when available, the Chair of the Commission accompanies the Post-Conviction Defender to the legislative budget hearings.

In addition, since the last sunset hearing, the Commission has re-appointed the current Post-Conviction Defender. The Commission did so following individual interviews with the majority of the staff and discussing the feedback received.

Post-Conviction Defender's activities in carrying out the responsibilities assigned in Section 40-30-206(d), Tennessee Code Annotated:

Tenn. Code Ann. § 40-30-206(d) requires the OPCD to provide various services to other counsel or the court. Those services and the manner in which the responsibility is carried out are listed below:

(d)(1) Maintain a clearinghouse of materials and a repository of briefs –

This requirement is carried out by maintaining a brief bank of all pleadings filed by the OPCD, informative pleadings filed by other counsel in and outside of Tennessee, as well as secondary materials related to issues typically involved in capital cases. The office also maintains information about experts qualified to be retained in capital cases. These resources are shared with outside capital defense attorneys upon request. The office receives such requests often and provides assistance in a timely manner. The OPCD also collects training materials from state and national capital defense seminars, which can be shared if permitted by the training organizations. In addition, the OPCD maintains an office library which contains literature relevant to capital defense and is available for review to attorneys representing indigent defendants in capital cases.

(d)(2) Provide continuing legal education training –

The Post-Conviction Defender is a member of the Tennessee Association of Criminal Defense Lawyers committee in charge of preparing annual capital defense seminars in Tennessee. This seminar is the major training provided in the state for capital defense attorneys. The Post-Conviction Defender actively participates in planning the seminar, locating presenters, and provides staff to conduct some of the presentations. In addition, members of the OPCD may participate in other state or national trainings. Most recently, the Post-Conviction Defender taught a session on capital representation to the appellate section of the Tennessee Bar Association.

(d)(3) Provide consulting services –

The Post-Conviction Defender and other staff attorneys regularly talk with attorneys who contact the office for assistance. Due to statutory restrictions, assistance to lawyers handling cases at trial or on direct appeal are limited to being non-case specific. These restrictions exist to prevent future conflicts of interest—providing consultation at the trial or direct appeal level raises a risk of creating a conflict if the case eventually comes to the office for post-conviction review. However, the office frequently provides general information and advice helpful to capital defense representation.

(d)(4) Recruit qualified lawyers –

Typically the OPCD recruits qualified attorneys to represent clients in post-conviction, when due to a conflict of interest, it cannot accept the appointment. It has done so twice in the last five years. OPCD's assistance in obtaining qualified counsel for cases pending either at trial or on direct appeal is problematic, because it may give rise to a conflict of interest if the case later arrives in the office and the staff is required to raise claims of ineffective assistance of

counsel against the attorneys it had helped recruit.

9. How many cases is the Office of the Post-Conviction Defender currently defending or providing consultation on and what is the status of each of these cases? How many cases are currently waiting to be defended?

At present, the office is actively representing clients in 16 cases: ten cases are pending in the trial courts, five cases are pending in the appellate courts (following denial of relief by the trial court or denial of motion to re-open post-conviction proceedings), and one case is in pre-clemency stage.

The Tennessee Supreme Court affirmed conviction and sentence in two additional capital cases, and the office expects to be appointed to represent those clients within the next few months. Further, three more capital cases are currently pending in the appellate courts and if affirmed, the office will likely be appointed to them within the next 18 months. Finally, there are currently 12 capital trial proceedings pending. Some of those clients will likely be represented by the office as well. In addition, changes in the U.S. Supreme Court or the Tennessee Supreme Court case law can require re-opening of post-conviction cases that had already been completed, which will unexpectedly increase the office's caseload.

10. What reports do the commission and the office prepare on their operations, activities, and accomplishments, and who receives these reports? If an annual report is prepared, please attach a copy of the most recent report.

The Post-Conviction Defender provides the Commission with an oral report on the status of the office during each Commission meeting. Further, the Post-Conviction Defender prepares an annual written report to the Commission which describes the general state of affairs of the office, as well as specific challenges that the Post-Conviction Defender wants the Commission to consider. A copy of the most recent report is attached. (See Attachment One.)

11. What policies are in place to address potential conflicts of interest by commission members or Office of the Post-Conviction Defender staff?

Conflicts involving the Commission:

Under Tenn. Code Ann. § 40-30-202(b), "in order to avoid possible conflicts related to cases assigned to the post-conviction defender's office, no member of the commission shall advise, counsel, or otherwise directly assist the post-conviction defender's staff in providing legal representation in such cases." In the past, Commission-related conflicts involved members having represented the client or a co-defendant in a prior proceeding in a case now being handled by the post-conviction defender, having represented the client or a co-defendant in a past case, or, as happened once, being related to a victim or participant in the trial. In the case of a former prosecutor serving on the Commission, a conflict could arise if the Commission member was involved in the prosecution of the office's client in the current or earlier case.

Upon being notified of a new appointment of the Commission, the Post-Conviction Defender conducts a conflicts check. If the appointment carries a possibility of conflict of interest, the

Post-Conviction Defender will inform both the Chair of the Commission and the appointing authority. here is currently a conflict of interest issue that the Commission is dealing with due to one of the commissioners previously representing one of the OPCD's current clients. The issue will be discussed by the full Commission at its next meeting on August 15, 2017.

Conflicts involving the OPCD Staff

The primary example of a conflict of interest by the OPCD staff involves prior representation of the office's client or previous case-specific consultation with the client's trial or direct appeal attorneys by a staff member. As part of the hiring process, the office evaluates whether any candidates could cause a conflict of interest with respect to current cases or cases coming to the office in the near future. The office decides on case-by-case basis whether the conflict can be managed prior to making any hiring decisions.

Other conflicts:

To prevent other types of conflicts, the OPCD follows all State government rules and regulations involving such things as accepting gifts from vendors, holding outside employment, and our interactions with other State agencies. Further, a Code of Conduct policy, which includes fundamental ethics principals, and a Conflict of Interest policy are addressed in the Office's Policy Manual.

12. Describe any items related to the commission that require legislative attention and your proposed legislative changes.

There are no pressing issues that require legislative changes. However, in April 2017 the Administrative Office of the Courts' Indigent Representation Task Force issued a report recommending that the State of Tennessee consider creating an independent commission to oversee all of indigent representation in the state. If the state decides to pursue the creation of such a commission, legislative action will be required to bring the OPCD under the umbrella of the new state-wide commission. It is a legislative action that would be spear-headed by the Administrative Office of the Courts as part of the comprehensive changes to the indigent representation mechanism in the state.

13. Should the commission be continued? To what extent and in what ways would the absence of the commission affect the public health, safety, or welfare of Tennessee citizens?

For the reasons that the Commission and the OPCD were created, they should be continued. There is both a moral and constitutional obligation for any jurisdiction with capital punishment to ensure that this extreme penalty is not inflicted arbitrarily or unreliably. Post-conviction review remains a key mechanism in catching mistakes committed within the system and giving the state the opportunity to address them before the case progresses to federal court. Since the death penalty was reinstated in Tennessee in 1976, relief has been granted in 57% of capital case proceedings. In 40% of those cases, the conviction or sentence was vacated as the result of state post-conviction review. As this data shows, significant mistakes are often made in adjudication of capital cases in Tennessee. A well-functioning appellate process is crucial to identifying the cases in which the conviction or death sentence

were improper.

The absence of the OPCD would remove a valuable instrument of attempting to ensure the reliability of the death penalty and would increase the risk of executing an innocent person, a person not guilty of capital murder, or a person who is either not eligible or not deserving of the death penalty. Death penalty litigation and post-conviction procedures remain complex and the practice is very demanding. It is necessary to maintain an office with expertise in this area in order to provide high quality representation to the citizens of Tennessee and to do so in an efficient manner. Having an institution with the comprehensive knowledge of the relevant law, procedure, and intricacies of capital defense practice, as well as organizational structure to support the comprehensive investigation and litigation required in each case, effectively achieves those goals.

There is currently no other entity in Tennessee that can fulfill the role of the OPCD. The District Public Defender Offices have far too high caseloads to handle these complex cases with voluminous records. In addition, since the local public defenders handle many of the cases at trial, they would often have a conflict of interest in handling the post-conviction. Further, there is presently no other office that is maintaining a brief bank or that is available for consultation in death penalty cases.

The Commission is an essential administrative body that governs the Office of the Post-Conviction Defender. The Commission provides the sole oversight of the office. Accordingly, it should continue along with the OPCD.

**Sunset Public Hearing Questions for
Post-Conviction Defender Commission**

Attachment One:

Report to the Post-Conviction Defender Oversight Commission

Dated November 2, 2016

REPORT TO THE POST-CONVICTION DEFENDER OVERSIGHT COMMISSION

By Justyna G. Scalpone

November 2, 2016

Introduction

This year's report focuses on major developments during the time period from October 2015 through October 2016. Last year has been defined by staffing and structural changes which are described below. Our goal is to continue to hone in on the best ways to organize our resources and further improve the quality of the office. We have made great strides, but are constantly working on further improvements.

Caseload

The office currently has 22 cases. They are in a variety of procedural postures:

Post-Conviction Proceedings

- Six are in a pre-evidentiary hearing stage
- Two are pending on appeal

Other Collateral Proceedings (motions to re-open PC, coram nobis, etc.)

- 13 are pending either in trial or appellate courts
- 1 case is in the pre-execution stage, but stayed pending the lethal injection challenge filed by the inmates. Two of the above 13 cases may be in the pre-execution stage soon, depending on the result of the pending collateral proceedings.

There are three capital cases pending on direct appeal in Tennessee Supreme Court, which are likely to arrive in our office in 2017. One of the cases has been fully briefed and argued since January of this year and we expect the decision to come down any day.

In addition, the Tennessee Supreme Court heard oral argument in the lethal injection litigation earlier this month. Because the case has been moving very quickly, it is possible that the decision may be issued by the end of December. Depending on the outcome of the case, new execution dates could be scheduled in early 2017. Our office may need to get involved in end-stage litigation in state court for some of those inmates. We will be meeting with the federal defenders from both the middle and eastern districts to discuss any such potential needs.

Changes to the Office Structure

Network Administration

After consultation with our budget analysts at the Department of Finance & Administration, we made the decision to retain an information technology (IT) consulting company to provide network administration services, rather than have an IT employee on staff. We had an opportunity to make the transition once our IT Director resigned. We signed a contract with LogicForce, a local IT company, to provide network support as well as offsite data storage. Our payment for contract services is less than the salary and benefits we paid the IT Director. In addition, it is beneficial to have a built-in accountability system inherent in a company setting. We have been working with LogicForce for four months now and are very pleased.

Provided that the consultation services remain to be in the best interest of the agency, we plan to ask to reduce the number of employee positions by one during the next budget request. At the same time, we will also ask that a requisite amount of money be transferred within our budget from above to below-the-line to provide sufficient equity to pay for LogicForce services.

Investigative staff

After reviewing the workload of the legal assistants and investigators, we made a decision to convert one of the legal assistant positions into an investigator one. With our office no longer being on two floors and the addition of the HR assistant position last year, we have realized that we no longer have the need for two legal assistants. On the other hand, given our extensive investigative obligations, having a fourth investigator in the office will be of great help. The additional investigative staff will not only assist with the current workload, but will also allow us to handle almost all of our mitigation investigation in-house.

Historically, the office investigators have conducted all guilt phase investigation and shared sentencing phase investigation responsibilities with outside mitigation specialists retained on a contract basis and paid for from the Indigent Representation Fund. However, in the past we have often run into problems with effectively overseeing the work of outside mitigation specialists. In our experience, mitigation specialists in private practice tend to accept too many appointments, causing their performance to suffer. Handling all of the investigation internally will ensure better quality control. It will also be more cost-efficient for the State, since it will limit our use of the Indigent Representation Fund. We will still have the option of retaining outside mitigation specialist, but will do so only if our own resources are insufficient.

In addition to increasing the number of investigators in the office, we also want to ensure that the investigative staff has sufficient experience and/or educational background to handle all the aspects of mitigation investigation. Although it is not a prerequisite, a majority of mitigation specialists have either a psychology or social work background. Half of our investigative staff

will have Masters of Social Work (MSW) degrees by the end of this fiscal year. All have varying degrees of experience in conducting investigation in capital cases.

Case Teams

We have also changed the structure of our case teams in order to provide more hands-on supervision. Kelly Gleason and Debbie Drew, our two most seasoned litigators, became managing attorneys. Each case team now has two assistant post-conviction defenders, as well as one managing attorney. The managing attorney's role is to oversee the work of all team members, provide guidance, ensure that the case is progressing appropriately, and assist in any direct tasks that are necessary.

Staff Changes

Four employees left the office during the last year: an investigator, a legal assistant, the IT Director, and an attorney. For part of the year, we also had another attorney vacancy, lingering from 2015. As the result of the vacancies and the structural changes described above, the following hiring decisions took place:

- Jilian Campbell was moved from a paralegal into an investigator position. Jilian has a Bachelor's degree in Social Work and has previously worked as a juvenile probation officer. In her paralegal function, she was already performing various investigative tasks and was given extensive hands-on training prior to the other investigator's departure from the office. She is currently in an MSW program and will obtain the degree in June 2017.
- Melodi Grisham was promoted from legal assistant to the paralegal position vacated by Jilian. Melodi came to our office a year earlier with almost two decades of legal assistant and paralegal experience.
- Traci Pointer was hired as a legal assistant in order to fill the vacancy created by Melodi's transition into the paralegal position. Traci has a Bachelor's degree in Business Administration, as well as a Master's degree in Education. She previously worked as an office manager for an on-line education company.
- Andrew Harris joined our office in June as one of our new attorneys. He has approximately 13 years of capital defense experience, with ten of those years at the Capital Habeas Unit of the Federal Community Defender's Office in Philadelphia.
- Kristen Mueller, an attorney with approximately eight years of experience at the State Appellate Defender in Chicago, will start on December 1.
- Heather Barrow was hired to fill the additional investigator position and will start on December 1, as well. She has 17 years of experience working as both an investigator and a mitigation specialist. Most recently, she was the Chief Investigator at the state capital post-conviction office in Florida.
- Regina Chambers was also hired as an investigator. She is a recent graduate from the MSW program at the University of Mississippi and has done her practicum training at the

capital trial division of the Mississippi State Public Defender. She will also start on December 1.

We were not originally planning to hire two investigators; however, when Regina applied, we jumped on the opportunity, given her MSW degree and overall makings of a great capital investigator. As the result, we will have five investigators, but only for a period of about six months. Larry Gidcomb, our senior investigator will be retiring by June 30, 2017, at which point Regina will move into his position. Prior to his departure, Larry will be able to assist in training Regina, helping ease the transition.

Budget

Our budget hearings with respect to the current fiscal year were uneventful and the budget passed without any problems. At the end of the FY 2016, we were able to revert \$290,000 back to the State, mostly due to payroll savings. We have submitted the FY 2017/2018 Budget Request, in which we asked for only one adjustment: the statutorily mandated step raises for the attorneys in the amount of \$35,800.

Oversight Commission

We currently have one vacancy on the Commission and are waiting for the Speaker of the House to make the appointment. We will soon also have another vacancy, because Commissioner Mary Wagner has been appointed by the Governor as a Shelby County Circuit Judge. Once Ms. Wagner steps down from the Commission, the new vacancy will need to be filled by the Governor.

2016 Legislative Session

Senator Dickerson's office reached out to the OPCD for background advice on a bill aimed to mandate retention of physical evidence in capital cases. Following many meetings with the Senator and his staff and representatives of the law enforcement community, the final version of the bill was agreed upon and it passed both houses of the General Assembly without any problems. The new law requires that physical evidence obtained in capital cases be preserved until dismissal of charges or the defendant's death. It also clarifies where the evidence should be housed. Ideally, this law would be extended to include physical evidence in all felony convictions; however, this was a good first step.

AOC Indigent Representation Task Force

Throughout the year, I have been attending the meetings of the Task Force, which is taking a comprehensive look at Tennessee's indigent representation system. The major issues discussed include rates for appointed counsel, excessive caseload in public defender offices, and the structural problems in the current administration of the fund. Our office was asked to speak on September 30 this year. Dean Koch, the Task Force Chair, was particularly interested in what

we view as most problematic in the current system, as well as issues involved in consolidation of direct appeal and post-conviction offices. He was especially interested in the structure of appellate defense systems in other states.

In the presentation, I focused on problems specific to capital cases. I shared with the Task Force the data our office has been compiling regarding the reversal rate in Tennessee capital cases since 1977, which is almost at 60%. I talked about the common problems we see in representation at trial and discussed the need for capital defense qualification standards based on quality of performance, rather than simply prior experience. I briefly touched upon the AOC rates for experts and suggested that even if the fund does not have sufficient resources to raise the rates, the rules give the trial court discretion to approve expert services at higher rates if due process so requires in a particular case.

I also presented data regarding appellate defense systems in other death penalty states. Our office spent a considerable amount of time gathering information regarding how those states handle direct appeals and post-conviction in both capital and non-capital cases. It turns out practices vary greatly, even within some of the states. All states recognize that potential conflict of interests exist when the same attorney or office represents a client on direct appeal and in post-conviction. Some of the states preempt any such problems by creating separate offices to handle each proceeding, especially in capital cases, while others will appoint the same office/attorney to handle the case and let that person/entity raise any conflict issues there may be. If that occurs, a conflict counsel will be appointed to the case.

The Task Force has recently asked the Tennessee Supreme Court for an extension of four months to issue its report. The report is expected to be finished in April of 2017. Depending on the recommendations, some plans may be included in the budgetary process in the fall of 2017 and others in the legislative session of 2018.

Tennessee Association of Criminal Defense Lawyers Death Penalty Award

In August, our office received the Death Penalty Award from the Tennessee Association of Criminal Defense Lawyers (TACDL). The award is given to individuals or organizations in recognition of their outstanding work in the capital defense arena. Five of us traveled to the Annual TACDL Meeting in Knoxville to accept the award. In presenting the award, the president of TACDL specifically recognized our office for obtaining relief for thirteen clients in the last 8 years. It was a gratifying and humbling experience, and we are honored to be this year's recipients of the award.

Conclusion

The office continues to develop, aiming to provide high quality representation to the clients, while fostering employees' professional growth and a supportive work environment. As we go forward, we will keep evaluating the best ways to achieve those goals and also to serve the

local defense community. We are also honored to be included in the AOC Task Force's effort to improve Tennessee's indigent representation system and will work to be an effective resource in that respect.