

**LEGISLATIVE PROPOSAL
TO
THE BOARD OF GOVERNORS
STATE BAR OF GEORGIA**

This Proposal is submitted by the Board of Directors (“Board”) for the Georgia Appellate Practice and Educational Resource Center, Inc. (“Resource Center”). The Proposal seeks State Bar endorsement for continued funding 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.

**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.

Subsequent to the acceptance of the Special Committee’s report, the Special Committee implemented its many components. The Supreme Court of Georgia and the federal courts established procedures for the adequate representation of death-sentenced inmates in post-conviction. The federal courts agreed that when Georgia attorneys were appointed in these cases that they would receive reasonable reimbursement of fees and expenses under the Criminal Justice Act. The Georgia State University College of Law initially housed the Resource Center, which is a 501(c)(3) nonprofit organization. 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, is affiliated with the

Georgia State University College of Law,¹ and is governed by a Board of Directors of thirteen attorneys from throughout Georgia. The Resource Center commenced operation on September 15, 1988. The Resource Center staff is currently comprised of the Executive Director, six (6) 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 Atlanta area, including the staff at the Attorney General's Office.² Moreover, the staff of the Resource Center work 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, and is a necessary safeguard to wrongful execution.³

¹The 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.

²The 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 - 73,000
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

³Since 1996, 26 death penalty cases have resulted in post-conviction reversals and only two of those reversals have resulted in a death sentence – 13 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 are juveniles and can not be resentenced to death). During that same period, 22 death sentences have been carried out. The significance of this rate of error is obvious – proving that the system can only

For the past twenty (20) 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 eight 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.⁴ In addition to this substantial increase in caseload, the cases are moving through post-conviction proceedings at an unprecedented faster pace.⁵ 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 the *Gibson*⁶ decision, the Resource Center staff has been confronted with a

be fundamentally fair if there is a Resource Center to provide checks and balances to the system in state habeas capital review.

⁴The 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.

⁵Attorney General Baker acknowledges that “death penalty cases are now moving more quickly than at any other time in modern Georgia history.” www.thurbertbaker.com. 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) projected. 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.

⁶*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

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*.⁷ The Resource Center has ethically felt compelled to take on 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. Because of the Governor's recently mandated 6% budget reduction, the Center anticipates that its grant will be cut to \$545,000. Fortunately, the Georgia Bar Foundation increased its grant to the Center for FY 2009 making up \$220,000 cut by the General Assembly.⁸ 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 \$580,000 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.

constitutionally compelled.

⁷Habeas courts have frequently responded to the Resource Center's pleas for additional time to work up 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).

⁸In FY 2009, the Bar Foundation awarded the Center a grant for \$792,000.

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 \$580,000 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 3, 2008

Respectfully submitted,

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Executive Director

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Chair/President of the Board of Directors