

RESOLUTION ELF-02-2008

Death Penalty Revisions: Adopting Fair Administration of Justice Commission Recommendations

TEXT OF RESOLUTION

RESOLVED that the Conference of the Delegates of California Bar Associations urges the California Senate and Assembly to pass legislation, and the Governor to sign such legislation into law, implementing each one of the unanimous recommendations of the California Commission on the Fair Administration of Justice, contained in "Part A" of its Final Report and Recommendations on The Administration of the Death Penalty in California, released on June 30, 2008, as follows:

1. The Commission recommends that the California Legislature immediately address the unavailability of qualified, competent attorneys to accept appointments to handle direct appeals and habeas corpus proceedings in California death penalty cases:

A. The Commission recommends that the backlog of cases awaiting appointment of counsel to handle direct appeals in death penalty cases be eliminated by expanding the Office of the State Public Defender to an authorized strength of 78 lawyers. This will require a 33% increase in the OSPD Budget, to be phased in over a three year period.

B. The Commission recommends that the backlog of cases awaiting appointment of counsel to handle habeas corpus proceedings in death penalty cases be eliminated by expanding the California Habeas Corpus Resource Center to an authorized strength of 150 lawyers. This will require a 500% increase in the CHCRC Budget, to be phased in over a five year period.

C. The Commission recommends that the staffing of the Offices of the Attorney General which handle death penalty appeals and habeas corpus proceedings be increased as needed to respond to the increased staff of the Office of the State Public Defender and the California Habeas Corpus Resource Center.

D. The Commission recommends that funds be made available to the California Supreme Court to ensure that all appointments of private counsel to represent death row inmates on direct appeals and habeas corpus proceedings comply with ABA Guidelines 4.1(A), and are fully compensated at rates that are commensurate with the provision of high quality legal representation and reflect the extraordinary responsibilities in death penalty representation. Flat fee contracts should not be utilized unless an hourly alternative is available, and any potential conflicts of interest between the lawyer maximizing his or her return and spending for necessary investigation, and expert assistance and other expenses are eliminated.

2. The Commission recommends that funds be appropriated to fully

reimburse counties for payments for defense services pursuant to California Penal Code Section 987.9.

3. The Commission recommends that the California Legislature reexamine the current limitations on reimbursement to counties for the expenses of homicide trials contained in Government Code Sections 15200-15204.

4. The Commission recommends that California counties provide adequate funding for the appointment and performance of trial counsel in death penalty cases in full compliance with ABA Guidelines 9.1(B)(1), 3.1(B), and 4.1(A)(2). Flat fee contracts that do not separately reimburse investigative and litigation expenses should not be permitted. Such contracts should not be utilized unless an hourly alternative exists. In all cases, attorneys must be fully compensated at rates that are commensurate with the provision of high quality legal representation and reflect the extraordinary responsibilities in death penalty representation.

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

Existing Law: The California Commission on the Fair Administration of Justice concluded in its final report on June 30, 2008 that California's administration of the death penalty is "a dysfunctional system."

Yet, the death penalty is the law of California and since 1978 when voters expressed their support for capital punishment, it has been the law, but in name only, and not in reality. The lapse of time from sentence of death to execution averages over two decades in California. Just to keep cases moving at this snail's pace, we spend over one hundred million dollars annually. However, those wrongfully convicted and condemned to death must wait years before counsel is appointed to represent them on appeal, and then additional years before the courts decide whether they are entitled to a new trial or penalty hearing. To reduce the average lapse of time from sentence to execution by half, to the national average of 12 years, we will have to spend nearly another hundred million dollars annually. These expenditures are required if we are to keep a death penalty system.

This Resolution: Supports the unanimous recommendations of the California Commission on the Fair Administration of Justice on fixing a "dysfunctional" death penalty system.

The Problem: Correcting the dysfunctional death penalty system in California will require an enormous expenditure of funds at a time when California is facing an unprecedented budget crisis. The remedies which the Commission has recommended will require a new investment of "at least \$95 million dollars per year," and these new expenditures would be on top of the current cost of the present system at \$137 million per year. The California death penalty system will cost \$232.7 million per year after implementation of required reforms. However, even with substantially increased funding, the reduction will only be from twenty to

ten years from conviction to execution.

Advocates for alternatives to the death penalty see cost as a compelling reason to either abolish the death penalty (in favor of life imprisonment without the possibility of parole) or to strip down the number of “special circumstances.” Supporters of the death penalty concede that the Commission has identified critical areas where changes are needed, and quantified how much these changes would cost. They support these expenditures.

Alternatives to the death penalty would result in substantial savings. A system which imposes a maximum penalty of lifetime incarceration instead of the death penalty will cost \$11.5 million annually. A system in which significant narrowing of special circumstances has been implemented would have an annual cost for the modified death penalty system of \$130 million.

It is crucial that the California public become educated about the need to repair a dysfunctional California death penalty system. The unanimous voice of the Conference of Delegates in support of the recommendations by the California Commission on the Fair Administration of Justice will inform the Legislature and the Governor of their need to act.

AUTHOR AND/OR PERMANENT CONTACT: Frank Z. Leidman, Law Offices of Frank Z. Leidman, 473 Jackson Street, Third Floor, San Francisco, CA 94111, Cellular Telephone: (415) 308-1590; Email: Frank@LeidmanLaw.com

RESPONSIBLE FLOOR DELEGATE: Frank Z. Leidman