

THE CRISIS OF COUNSEL IN ALABAMA

A fair criminal justice system requires competent and effective lawyers. Yet, in Alabama, when the stakes are highest, there is a serious crisis in the quality of counsel. At the trial level, attorneys for indigent capital defendants have been hampered by low hourly rates and caps on overall compensation. The postconviction arena is even grimmer: inmates under sentence of death have no right to counsel. Any prospect for a fairer criminal justice system in Alabama depends on an improved commitment to assuring adequate counsel.

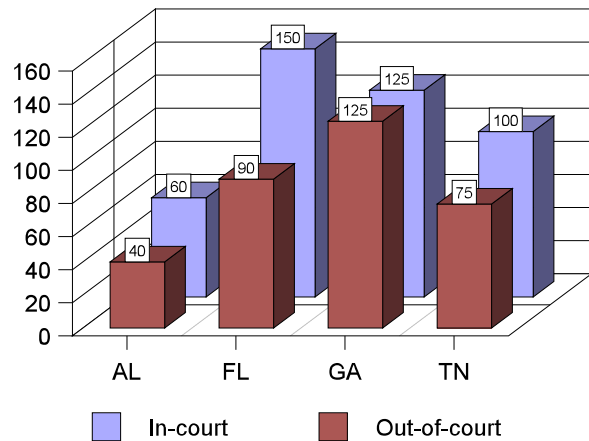
There is no statewide indigent defender system in Alabama. Of 41 judicial circuits in Alabama, only four have a public defender, of which only one tries capital cases. Ten circuits contract with attorneys for a monthly fee. One study revealed that in these counties, the attorney did not file a single motion in 72% of all felony cases, and did not ask for experts or funds for investigators in 99.4% of cases.

70% of current death row inmates were convicted when their attorneys' compensation for out-of-court work was capped at **\$1,000**.

The majority of judicial circuits appoint attorneys to represent capital defendants for an hourly fee. State law sets only one requirement for seeking appointment to a capital case: five years of criminal experience. Even with this minimal standard, trial courts allow exceptions.

Further, despite ABA guidelines calling for no fewer than two attorneys in any capital case, Alabama law requires only one.

Compensation (\$/Hour) for Appointed Counsel in Capital Trials



State law has always set very low compensation rates for capital trial attorneys. Approximately 70% of inmates currently on Alabama's death row were convicted while the overall compensation to their attorneys for out-of-court work was capped at \$1,000. Today, after defendants have been convicted and sentenced to death, their direct appeal attorneys, who are responsible for raising all the trial errors to the two state appellate courts, are compensated at a rate of \$60/hour, but are capped at just \$2,000 per court to which they appeal.

Under these circumstances, it is no surprise that Alabama courtrooms have been the sites of terrible lawyering. One drunken attorney was ordered to sleep off his intoxication in jail during his client's capital trial, while another attorney who represented capital defendants claimed to be a "mystic, clairvoyant, and prophet," who

heard voices and relied on alleged paranormal powers in his representation. To be sure, ineffective assistance of counsel cases are not limited to the bizarre: a 1996 study revealed that the average penalty phase in the state, including jury deliberations, was less than three hours.

“Our capital system in Alabama is in disarray. Without counsel to vigorously represent death row inmates in state postconviction, we know that there have been instances where justice was not served.”

Amicus Brief to U.S. Supreme Court
from Alabama Appellate Court
Justices and Bar Presidents

Alabama is one of only a handful of states that does not provide postconviction counsel to death row inmates as a matter of right. Counsel is critical to both the preparation of a petition, and to the subsequent pursuit of its claims.

Every other state with the death penalty provides condemned inmates legal assistance in preparing and presenting postconviction claims. Since 1997, Alabama has provided counsel to just one of 95 death row inmates prior to filing; that inmate was actively seeking to be executed. Without legal assistance pre-filing, inmates with no resources and no ability to investigate beyond the walls of their prison must somehow navigate the complex requirements of Alabama’s Rule 32 alone. This can prevent an inmate from ever getting a court to review whether his trial lawyer was constitutionally ineffective, whether the prosecution hid exculpatory evidence, or claims of juror misconduct. Any failure to comply with the technical requirements of Rule 32, including a rule

requiring that all claims be presented within one year of the end of an inmate’s direct appeal, invites procedural bar. Unsurprisingly, inmates who file their petitions *pro se* are frequently barred.

Even when the state appoints counsel, compensation for the entirety of an attorney’s postconviction representation is capped at \$1,000. Because adequate postconviction representation entails reading the trial transcript, which can run thousands of pages; conferring with the client; conducting a factual investigation; and researching and writing legal documents, tasks that combined equal hundreds of hours of work, attorneys who represent inmates in Rule 32 proceedings are either skipping important steps in the representation, or working at rates below the federal minimum wage.

“[Whether the issue is] the right to a free transcript on appeal . . . [or] whether or not an indigent shall be denied the assistance of counsel on appeal[, i]n either case the evil is the same: discrimination against the indigent. For there can be no equal justice where the kind of appeal a man enjoys ‘depends on the amount of money he has.’”

Douglas v. California
U.S. Supreme Court, 1963

Reform of the right to counsel rules, and the subsequent compensation of counsel, is necessary in Alabama. Until poor defendants and inmates have quality legal representation at all stages of the capital process, and until such representation is adequately funded, the crisis of counsel in the state will hinder the ability of the criminal justice system to yield fair and just results.