

GPDSC DEATH PENALTY DEFENSE STANDARDS

INTRODUCTION

The Georgia Public Defender Standards Council adopts and implements the ABA *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (rev. ed. 2003) [*“Guidelines”*]. 31 Hofstra L. Rev. 913 (2003). These Guidelines are not aspirational; rather, they represent the “standard of practice for the defense of capital cases.”¹ Failure to strictly adhere to these standards will deny the accused indigent citizen facing the death penalty a full measure of justice and will undermine the legality of the death sentence in subsequent *habeas corpus* proceedings.

Shortly after the adoption of the Guidelines, the United States Supreme Court, in a case reversing and remanding a death sentence due to ineffective assistance of counsel, acknowledged the Court’s reliance on the ABA Guidelines for determining what is required from defense counsel in a capital case. Wiggins v. Smith, 539 U.S. 510, 522 (2003). The Supreme Court reiterated that the “prevailing norms of practice as reflected in American Bar Association standards . . . are guides to determining what is reasonable.” Id., (citing Strickland v. Washington, 466 U.S. 668, 688-89(1984).

Due in large measure to the Supreme Court’s reliance on the Guidelines and the accompanying Commentary, GPDSC adopts these comprehensive Guidelines in full except in the rare occasion where the Guidelines specifically contradict the law of Georgia. In this event, the Guideline shall be inapplicable to Georgia. For instance, Guideline 2.1(C) and the Commentary for Guideline 3.1 specifically require that all death penalty defense lawyers should be appointed by an independent agency free from political influence rather than by the judiciary. OCGA §17-12-127(b) requires the presiding judge to appoint counsel in all instances where the office of the Georgia Capital Defender has a conflict of interest.²

Guideline 8.1 requires training and professional development by members of the defense team and invites GPDSC to adopt a minimum training standard for Georgia. GPDSC adopts and endorses the minimum training requirement set out in Unified Appeal Rule II. A., which has long been the requirement in Georgia, requiring the all trial counsel and appellate counsel received at least ten hours of specialized death penalty training within twelve

¹ 31 Hofstra L. Rev. 913, 920 (2003).

² Additionally, Guideline 7.1 mandates the monitoring of counsel and removal of counsel who is failing to provide high quality representation. GPDSC will monitor the Office of the Georgia Capital Defender. However, flowing from the judiciary’s power of appointment in conflict of interest cases, the judiciary alone shoulders the obligation to monitor and remove counsel that fails to provide high quality representation in conflict cases. To the extent GPDSC is made aware of complaints regarding the defense of the conflict cases, GPDSC may attempt to investigate the problems and document them for the judge.

Notice of intention to adopt the preceding Standards for the Appointment and Performance of Defense Counsel in Death Penalty Cases which consist of the introduction, ABA guidelines and the commentary was published on March 4, 2005 in accordance with § 2.3 (a) (1) of the Standards Council Bylaws and the preceding Standards were adopted by the Georgia Public Defender Standards Council at its meeting on April 6, 2005.

/s/ _____
Emmet J. Bondurant
Chairperson

Attested:

/s/ _____
Natasha Perdew Silas
Secretary