

By: Representative Capps

To: Judiciary A;
Appropriations

HOUSE BILL NO. 1363

1 AN ACT TO CREATE THE MISSISSIPPI CAPITAL POST-CONVICTION
2 COUNSEL ACT; TO CREATE THE MISSISSIPPI OFFICE OF CAPITAL
3 POST-CONVICTION COUNSEL AND SPECIFY ITS PERSONNEL; TO PROVIDE
4 QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE; TO PRESCRIBE THE
5 DUTIES OF ATTORNEYS IN THE OFFICE; TO PROVIDE FOR COMPENSATION; TO
6 SPECIFY OFFICE HOURS; TO AUTHORIZE THE DIRECTOR TO ACQUIRE OFFICE
7 SPACE, SUPPLIES AND EQUIPMENT; TO REQUIRE THE DIRECTOR TO MAINTAIN
8 A DOCKET; TO AUTHORIZE THE APPOINTMENT OF ATTORNEYS IN SITUATIONS
9 WHERE CONFLICTS ARISE; TO CREATE THE SPECIAL CAPITAL
10 POST-CONVICTION COUNSEL FUND; TO PROVIDE THAT ATTORNEYS APPOINTED
11 TO THE OFFICE SHALL BE FULL-TIME; TO PROVIDE FOR THE REMOVAL OF
12 ATTORNEYS; AND FOR RELATED PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 SECTION 1. This act may be cited as the "Mississippi Capital
15 Post-Conviction Counsel Act."

16 SECTION 2. There is created the Mississippi Office of
17 Capital Post-Conviction Counsel. This office shall consist of two
18 (2) attorneys, one (1) investigator and one (1) secretary. The
19 attorneys shall be appointed by the Chief Justice of the
20 Mississippi Supreme Court from a list of qualified candidates
21 furnished by the Mississippi State Bar Association. The Chief
22 Justice shall designate one (1) of the attorneys to act as the
23 director of the office.

24 SECTION 3. In order to be qualified for appointment as an
25 attorney with the Mississippi Office of Post-Conviction Counsel
26 the attorney must meet the following qualifications:

27 (a) Must be licensed to practice law in the State of
28 Mississippi and a member in good standing of the Mississippi State
29 Bar;

30 (b) Must have been engaged in the active practice of
31 law for four (4) years in the Mississippi state courts or

32 equivalent experience;

33 (c) Verified attendance at three (3) approved appellate
34 training programs, including one (1) program concerning the
35 capital litigation within the two (2) years prior to appointment;

36 (d) Must have worked as lead counsel on at least one
37 (1), or worked as co-counsel on at least two (2), post-conviction
38 proceedings before the Mississippi Supreme Court, with at least
39 one (1) of these proceedings involving a capital murder
40 conviction; or worked as lead counsel on at least one (1), or
41 worked as co-counsel on at least two (2), direct appeal
42 proceedings before the Mississippi Supreme Court, involving a
43 capital murder conviction;

44 (e) Submission of two (2) appellate or post-conviction
45 briefs written by the attorney, one (1) of which involves a
46 capital murder conviction, for review by the Mississippi State Bar
47 committee that makes the recommendations to the Chief Justice.

48 SECTION 4. The attorneys appointed to serve in the Office of
49 Capital Post-Conviction Counsel shall devote their entire time to
50 the representation of indigent capital defendants in state
51 post-conviction proceedings. No person appointed as an attorney
52 with the Capital Post-Conviction Counsel shall in any manner
53 participate in the trial or direct appeal of any capital case in
54 this state. Such participation shall be grounds for immediate
55 termination from employment with the Capital Post-Conviction
56 Counsel's office.

57 SECTION 5. The director appointed under this act shall be
58 compensated at no more than the amount set by statute for the
59 compensation of an Assistant Attorney General. The other attorney
60 shall be compensated at no more than ninety percent (90%) of the
61 salary of the director.

62 SECTION 6. The Director of the Office of Post-Conviction
63 Counsel is authorized and empowered to employ one (1) investigator
64 and one (1) secretary, and to fix their salaries in such amount as

65 he may deem proper within the funds appropriated for such purpose.

66 SECTION 7. The Director of the Office of Post-Conviction
67 Counsel shall keep the office open Monday through Friday for not
68 less than eight (8) hours each day. The director and his
69 assistant shall be there for business during said hours with the
70 exception of such time when the director or his assistants may be
71 required to conduct the business of the office at other locations.

72 SECTION 8. The director is hereby authorized to rent, on an
73 annual or month-to-month basis on such terms as he may think
74 proper, such office space as is necessary in the City of Jackson
75 to accommodate the staff, and to purchase such necessary office
76 supplies and equipment as may be needed for the proper
77 administration of said offices within the funds appropriated for
78 such purpose.

79 SECTION 9. The director shall keep a docket of all causes in
80 which he is required to appear, which must at all reasonable times
81 be open to the inspection of the public and must show the county,
82 district and court in which the causes have been instituted.

83 SECTION 10. If, at any time during the representation of two
84 (2) or more capital defendants, the Director of the Office of
85 Capital Post-Conviction Counsel determines that the interest of
86 those persons are so adverse or hostile that they cannot all be
87 counseled by the Director of the Office of Capital Post-Conviction
88 Counsel or his staff without conflict of interest, the Chief
89 Justice of the Mississippi Supreme Court shall upon application
90 therefor by the Director of the Office of Capital Post-Conviction
91 Counsel appoint one or more members of The Mississippi Bar to
92 represent one or more of such persons from a list of qualified
93 persons. Appointed counsel shall be paid from funds appropriated
94 to a Special Capital Post-Conviction Counsel Fund for this
95 purpose, which is hereby created. Monies in this fund shall not
96 lapse into the General Fund at the end of a fiscal year but shall
97 remain in the fund and any interest accruing to such fund shall

98 remain in the fund.

99 SECTION 11. The attorneys appointed to the Office of Capital
100 Post-Conviction Counsel shall serve on a full-time basis and are
101 prohibited from engaging in the private practice of law.

102 SECTION 12. The Chief Justice may remove any attorney
103 appointed to the Office of Capital Post-Conviction Counsel for
104 misconduct, incompetency, immorality, unprofessional conduct,
105 failure to perform duties of the office, neglect of duty or for
106 other sufficient cause.

107 SECTION 13. This act shall take effect and be in force from
108 and after July 1, 1999.