

# Monterey County The Herald

## County bows out on possible capital cases

Public defender says office lacks funds, lawyers to represent two special-circumstance defendants

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With members of a state justice commission calling for more funding to fix California's "dysfunctional" death penalty system, Monterey County's public defender opted out of two special-circumstance cases Monday because his office could not afford the cost.

Tasked with defending one of three defendants charged in the April 11 slaying of Jose Nicholas Zarate, Public Defender Jim Egar chose the one who is not facing a potential death penalty.

Egar said recent retirements of experienced attorneys, and difficulty replacing them because of budgetary constraints, have left his office limited in its ability to take on a case of life-and-death proportions.

"I think we have nine pending homicides," one of them a potential death penalty case, Egar said. "I did not feel as if we were in a position to take on additional capital cases at this time."

Marisela Zarate Andrade, 31, and Sergio Garcia de la Cruz, 32, are accused of kidnapping and murdering Zarate Andrade's husband, who was found bound and shot to death in the trunk of his car near a Gonzales vineyard on April 18.

Assistant District Attorney Charles Murphy accepted appointment for Maria de Andrade, 25, who is accused of conspiring with Zarate Andrade to obstruct justice by allegedly threatening witnesses in the case. De Andrade is married to Zarate Andrade's brother.

De la Cruz and Zarate Andrade will be appointed attorneys from the Alternative Defender's Office, which accepts appointment for indigent defendants when the Public Defender's Office declares a conflict.

Frank Dice, acting chief of the Alternative Defender's Office, said Salinas attorney Scott Erdbacher had agreed to take one of the defendants. Dice said he may be forced to look out of county for a second defense attorney.

The trio will return to court Wednesday for appointment of counsel and to enter pleas.

Need funds from state

Funding for defense attorneys both at the trial and appellate levels was one of the major concerns expressed in a report issued Monday by the California Commission on the Fair Administration of Justice, a nonpartisan advisory board appointed by the Senate in 2005 to explore all aspects of the criminal justice system.

While there was dissension among the diverse members of the commission, all agreed that the death penalty system in the state was "broken," plagued by excessive delays in appeals and executions.

To fix it, the commission said, the state needs to spend an additional \$100 million per year to increase the number of qualified attorneys to speed up the appeals process.

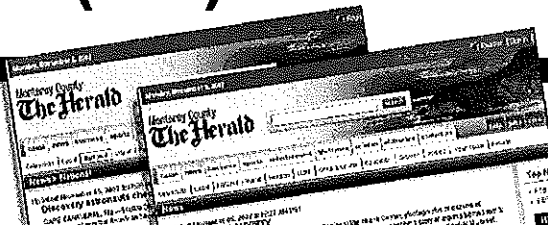
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The alternatives, the commission suggested, are to abandon capital punishment and replace it with permanent, lifetime incarceration, or to reduce the number of crimes eligible for the death penalty.

Under that alternative, murder during the commission of a felony, such as kidnapping, rape or robbery, would no longer be a capital offense.

District Attorney Dean Flippo said that is one option he would staunchly oppose.

### 'Felony murder' rule hurt two

Two of the Monterey County men currently on death row would have avoided capital punishment but for the "felony murder" rule.

Kristen William Hughes was sentenced to die for the 1989 rape and murder of Kim Hickman. The Pacific Grove woman suffered for more than an hour before she died of multiple stab wounds.

Ronald Moore was sentenced to die for murder during the commission of a burglary after he nearly decapitated 11-year-old Nicole Kathleen Carnahan when she interrupted a burglary as she arrived home from school in Salinas in 1998.

Flippo's office is currently seeking the death penalty against Jacobo Ruelas, who is charged under the felony murder rule in the 1997 stabbing death of 17-year-old Kristopher Olinger.

It is the first death penalty prosecutors have sought since 2000, when Joseph Kekoa Manibusan was sentenced to die for 1998 "murders for fun" of two Peninsula women.

### Others on death row

In addition to Manibusan, Moore and Hughes, the

other men on death row from Monterey County are:

· Kenneth Bivert, who was convicted in the 1997 fatal stabbing of another inmate at Salinas Valley State Prison. Bivert was in prison for the cold-blooded killings of three people he happened upon on the banks of the Sacramento River when he was 17 years old.

· Daniel Covarrubias, sentenced to die for the 1994 slaying of three members of a Salinas family. One of the victims was holding her 11-month-old daughter when she was gunned down.

All of the five cases remain in the appeals stage. Only Hughes' case has completed review at the state Supreme Court, where conviction was affirmed in 2002. Manibusan's appeal has not even been filed yet.

### Contracts to lowest bidder

Because of the delays in the appellate process, Flippo said he agrees with the commission's recommendation for more state funding for qualified attorneys. He said he also supports the call for the state to reimburse counties for the costs of capital murder cases.

State law requires counties be reimbursed, said Eggar, the public defender, but for many years the legislature has failed to appropriate funds.

"It hasn't stopped the counties from pursuing the death penalty," Eggar said, echoing concerns raised by the commission, "but it has produced a wild variety of defense practices, which has called the integrity of many of the proceedings into question."

Some counties appoint capital cases to the lowest bidder, he said. And he is aware of others where a contract has been awarded only to have the county

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threaten removal of the attorney from the appointment list unless he or she cuts the bill after the case is complete.

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