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APPELLATE PRACTICE • Jan. 11, 2008

George Lobbies Panel on Reforming Death-Penalty Appeals

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SACRAMENTO - California Chief Justice Ronald M. George faced some skeptics Thursday as he launched his lobbying effort for reforming death-penalty appeal procedures in the state.

Members of the California Commission on the Fair Administration of Justice asked whether the court's proposal to transfer some capital cases to the state Court of Appeal might exacerbate delays or create other problems in a system in which the average time spent awaiting execution is 17 years.

George defended the proposal, which was announced in November. The seven-member court has been unable to keep up with the backlog, despite spending one-quarter of its time reviewing capital cases.

"I view this as a real crisis, not just on the death penalty but on the ability of the court to function," George told the commission.

The advisory panel created by state lawmakers is scheduled to spend the next six months studying the death penalty.

George set out to educate the Legislature and the public with his testimony at Thursday's hearing in Sacramento and an opinion piece in the Los Angeles Times on Monday. But he said it would be up to the commission and lawmakers to fine-tune the court's proposed constitutional amendment and put it in front of the voters by November.

Under the court's proposal, all death-penalty appeals still would begin and end at the Supreme Court. But the high court would have the option of sending as many as 30 fully briefed cases a year to three-member panels of the appellate court for review.

The Supreme Court would scrutinize all lower-court decisions for errors, but without the burden of having to issue lengthy opinions.

The vice chairman of the commission, Jon B. Streeter of Keker & Van Nest in San Francisco, said he is concerned that the intermediate courts would not provide adequate review and that they could get bogged down by the extra work.

"That's where most of the law is made," Streeter said. "To transfer this workload, the same problem may occur there. We could end up with a worse problem."

George said that the appellate courts issue 17,000 opinions a year and that the proposal would add just 30 cases to that total. George said he consulted the presiding justices of the appellate courts, who assured him that they could handle the extra work, with some additional staff.

Gerald Uelmen, the commission's executive director, said the proposal does not address the lack of qualified attorneys available to represent review of habeas petitions, another factor blamed for causing delays.

"Are we putting the cart before the horse?" Uelmen asked.

George said the court has made progress in finding lawyers to represent 650 inmates on San Quentin's death row. There are 79 condemned inmates awaiting counsel, down from 170 a few years ago.

George acknowledged that 201 death-row prisoners don't have lawyers to represent them in filing petitions for habeas corpus, which raise problems that arise outside of the trial.

He said the court is working on a plan, which wouldn't require a constitutional amendment, to address that and other issues delaying habeas-corpus review.

Ideas include allowing more habeas petitions to be filed at the trial-court level and persuading the federal government to provide financial help, with the promise of more continuity when the cases get to the federal courts.

"The fundamental factor is money - and the court, and indeed the entire judicial branch, must look to the legislative and executive branches to provide appropriate and sufficient resources," George said. "I know these are hard truths in a difficult budget year."

He testified on the same day Gov. Arnold Schwarzenegger unveiled a state budget that the governor

said requires significant measures, including proposed inmate releases, to close a \$14.5 billion gap.

George said he did not have a cost estimate for his proposal.

Civil rights groups said the state cannot afford to fix the flawed death-penalty system and suggested abolishing it, instead.

"The alternative is clear: Sentence people to die in prison," Natasha Minsker, death-penalty policy director for the American Civil Liberties Union of Northern California, said in a statement.

California Attorneys for Criminal Justice renewed its criticism for allowing lower-court review in matters of life and death.

"Although the state Supreme Court's workload may decrease under the chief justice's proposal, California as a whole is not served when the result in a capital case depends on which three judges out of 105 happened to be assigned to a case," Richard Santwier, president of the criminal defense group, said in a statement. "One man lives, another dies, solely by chance."

The focus on revamping appellate review also masks other problems with the state's death-penalty system, including its disparate impact on racial minorities and the poor, the organization said.

George made it clear he wasn't there to debate the death penalty itself, only to provide solutions to a long-standing problem that has gotten worse. Since the death penalty was reinstated in 1977, capital cases have grown from 10 percent of the court's workload to as much as 25 percent, he said.

"There is no easy one-step cure for the dysfunctionality of the death-penalty appeals system so long as the people of our state continue to exercise their option to have the death penalty available in certain cases," George said.

The FAIR Commission, comprising prosecutors, defense lawyers, law enforcement representatives, law professors and private practitioners, has scheduled hearings on the death penalty for Feb. 20 in Los Angeles and March 28 in Santa Clara.

In its multiyear study of the criminal justice system, the commission has proposed legislation to reduce wrongful convictions, including requiring police to record confessions and banning uncorroborated testimony from jailhouse informants. Schwarzenegger vetoed the bills.

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