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on behalf of the California Public Defenders Association
Notes for Testimony
before the California Commission on the Fair Administration of Justice
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- The statutory scheme for reimbursement of homicide costs to counties set forth in Government Code section 15200, et seq., leaves crucial funding decisions in homicide cases at the discretion of the State Controller and is such a frustrating process that it is virtually impossible to deal with. Under the statutory scheme, counties cannot be reimbursed for "...normal salaries and expenses, incurred by the district attorney in investigation and prosecution, by the sheriff in investigation, by the public defender or court-appointed attorney or attorneys in investigation and defense (of a case)." And, incredibly, there is statutory language that, if taken literally, would require certain defense travel expenses to prior approval of the Attorney General.
- The State of California's abandonment of its obligation to provide funding for trial counsel for the defense over the past two decades, as set forth in Penal Code section 987.9, has placed the burden of providing for the defense of capital cases during trial entirely upon the counties, resulting in a tremendous burden on counties to meet their obligation to provide constitutionally adequate defense in capital cases.
- Notwithstanding the difficulties with funding, there has been a relatively recent and significant change in death penalty jurisprudence – and particularly the standards that must be applied to the defense of all capital cases – brought about by the U.S. Supreme Court's decision in *Wiggins v. Smith* (2003) 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471. In *Wiggins*, it was held that failure to expand the investigation of a capital defendant's life history for mitigating evidence beyond a routine presentence investigation report and obtaining social services records fell short of prevailing professional standards. As noted by the *Wiggins* Court, standards for capital defense work articulated by the American Bar Association are used by the United States Supreme Court to determine what is reasonable, and those guidelines "should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor." (*Wiggins*, supra, 539 U.S.510 at p. 524.).

As noted in *Wiggins*:

Despite the fact that the Public Defender's office made funds available for the retention of a forensic social worker, counsel chose not to commission such a report. Counsel's conduct similarly fell short of the standards for capital defense work articulated by the American Bar Association (ABA)--standards to which we long have referred as "guides to determining what is reasonable." (Citation.) *Williams v. Taylor* (Citation.). The ABA Guidelines provide that investigations into mitigating evidence "should comprise efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the prosecutor."

- In light of the detailed and stringent requirements of trial counsel set forth in the *Wiggins* case, and an absence of state funding that places the burden of defending capital cases almost entirely upon the counties, counties are hard-pressed to marshal the resources necessary to fund capital cases and meet the *Wiggins* guidelines.
- Reduced county revenues and impending state budget cuts will likely make the struggles of public defender offices even more dire and make it more difficult to meet the American Bar Association Guidelines.
- Overall, just as there are rich counties and poor counties in our state, there are significant disparities in funding at the trial level from county to county, from office to office, and between defense and prosecution. And there is also a significant funding disparity between compensation paid to trial lawyers, who are paid by the counties, and the compensation paid to post-conviction lawyers, who are paid by the State.
- Full funding at the trial stage will result in more settlements and fewer death sentences, and hopefully delimit the number of issues raised in post-conviction proceedings..
- Current efforts addressed only to the post-conviction stage of capital proceedings are doomed to failure unless and until we address problems – and particularly the funding problems – that arise during the earliest stages of capital litigation.