

Appellate Division Status

Overview:

Under *Garland*, new ineffective assistance of counsel cases have exploded.

In March, the Division had 75 cases distributed among five attorneys. By the end of October, it had 205 felony conflict appeals divided among a reduced staff of two full-time attorneys and one part-time consultant. As of November 30th, the Division was responsible for 235 cases, not counting four which were resolved that month. Eight contract attorneys are handling 109 of these, leaving 126 for the staff.¹ Each week, we receive three to four new cases and the number is growing. The tremendous impact of *Garland* is even more obvious when we note that JCATS reflected a total of 181 new conflict appeals filed in 2007. We have not reached the end of this year and our Division alone is handling 130% of last year's overall filings.

As a result of this explosion and of the issues explained below, our Division in particular has passed the crisis point. We have begun, justifiably, to receive backlash from both local judges and clients frustrated with inevitable delay.

Contract cases:

Under the current fiscal year budget reductions, we only filled eight of the intended ten contract positions. Our contract caseloads are weighted by case complexity. Thus, an 8-volume murder case will be weighted as 2 cases for contract purposes. Three of our contract attorneys have contracts for 20 pending cases and are located in the metro Atlanta area. Each of those contracts is full. The other five attorneys are spread throughout the remainder of the state and have contracts for 15 pending cases. Of those five attorneys, only two have space on their contracts to take up to two non-complex cases each arising in their geographical areas.

In-house cases:

The remaining 126 cases are handled by me [the Director], one full-time attorney and one part-time attorney. Ethically and practically, national standards contemplate that a lawyer can effectively handle only 25 appeals during a year, meaning that if we did not take another case it should take the Division two years to discharge its current responsibilities. This 25-appeals standard is deceptive, however, because it encompasses "paper" cases that proceed on fixed records and entail only reading the record, researching the law, and writing a brief. In Georgia, by contrast, most appeals begin with a motion for a new trial and Georgia requires IAC (ineffective assistance) claims—the very sort which "conflicts" cases to our Division—to be raised during this stage. Virtually every appeal we get thus requires a fact-intensive investigation, travel, and often an evidentiary hearing in addition to reading the record, researching the law, and writing a brief.

Source of cases:

There are several reasons for the rapid increase in *Garland* case numbers. First, many clients naturally raise IAC claims when they are convicted because they are disappointed and feel their attorneys' failure to obtain an acquittal *ipso facto* was ineffective representation. Under *Garland*, these clients automatically receive new counsel without any regard for whether they actually state an IAC claim as a matter of law or fact. Another reason, however, is that the conflicts policy which *Garland* imposed has become a caseload-management tool for overloaded

¹ A detailed breakdown of the cases is attached.

front-line lawyers, for difficult clients, and for cases containing no viable issues. Many lawyers in fact encourage their clients to raise IAC claims not because they believe that there is such a claim but because it means that the appeal will go elsewhere. These cases must come to our Division, and they often come with unsustainable client expectations about IAC claims which result in client relations problems.

Geographical distribution of in-house cases:

The cases handled by our staff attorneys are far flung throughout the state, representing six of the 10 judicial districts. For example, our in-house cases include a juvenile case in Whitfield County, a kidnapping and rape case pending in Effingham County and a murder case in Terrell County.

The widespread nature of our cases creates significant problems for us in scheduling hearings, investigating cases, and responding to frustrated judges and to frustrated clients, their families and their trial counsel. We have no investigative arm, requiring our few lawyers to divert to tasks which non-professionals could do. Just recently, I was subpoenaed to be in Hall County Superior Court to testify as a witness as Director of the Appellate Division on the same date that I had a hearing for another client in Fayette County – almost 81 miles away. I was able to resolve this conflict with some scrambling but I know that this type of situation will arise again with increasing frequency. While this Division must consider the management of cases on a statewide bases, the courts in each jurisdiction are rightfully focused on their caseloads and are not pleased when advised that we can not get to their cases first.

Complexity of cases:

The Division attorneys consistently receive the most difficult clients with the most serious offenses. In October, 39% of our cases involved murder or assault and 14% involved rape or child molestation. At the end of November, 42% of our cases involved murder or assault and 16% involve rape or child molestation. The complicated nature of these cases and the necessity to evaluate the claims of IAC require a significant commitment of time and investigation, often in inconvenient venues. With only two and one-half staff attorneys and one paralegal, we are severely limited in our ability to adequately investigate these cases. Our efforts to obtain investigative help from local PD offices have been mainly futile as the investigators are already overburdened with ongoing trial investigations.

Possible solutions:

Until our budget allows for increased staff attorneys or contract positions, we would revive a prior suggestion that circuit PD offices swap *Garland* cases among adjacent offices where feasible. This measure will not eliminate the cases coming to this office (or resolve our existing caseload) but it might reduce the growth of our backlog by removing the “caseload-management” incentives which now are artificially driving up the number of cases transferred here. It would also direct these cases to where the lawyers are. We are eager to work with the CPD offices to facilitate this switch pending a real solution to this problem. Any other practical solutions are welcome, as well.