

## Appellate Division Report – December 2008

As of December 31, 2008, the Division had a total of 249 cases.<sup>1</sup> The following is a summarized breakdown of information regarding those cases for the month of December:

- At the close of the month, outside contract attorneys were handling 109 active cases.
- The remaining 140 cases are being actively handled by our 2.5 in-house attorneys (and one paralegal) or are being monitored as a part of our backlog.
- There were 75 cases in the Division's backlog.
- During December, in-house attorneys represented clients at five separate hearings on motions for new trial and one hearing on the status of clients who had not been assigned counsel to actively work on their cases.

I have several notable observations regarding the appeals handled by this Division between July 1, 2008 (the start of the fiscal year) and December 31, 2008:

- As of the end of the first six months of this fiscal year, the Appellate Division has handled over 135% of the total conflict appeals identified in JCATS in all of the 12 months of 2007.
- Within those six months, the Division has received a total of 263 cases, and closed 17 of those cases. The appellate process generally takes anywhere from six months to two years.
- Despite initial hopes, many attorneys across the state were unwilling to accept appellate appointments from us because of the time and efforts inherent in handling appellate cases, and the limited compensation the Agency was able to pay.
- As indicated in the November report, the deluge of cases pouring in under *Garland v. State* has created the predicted crisis. Despite the best efforts of our attorneys to handle more than the contemplated 25 "paper appeals"<sup>2</sup> we are receiving significant backlash from both local judges and clients, further complicating the management of an impossible case load.

As an example of the backlash we receive from judges, I was summoned to a show cause hearing in Judge Russell's courtroom in the Fulton Superior Court on December 18<sup>th</sup>, where I, along with Jim Bonner of this office and Assistant Attorney General DeBrae Kennedy, appeared. During the hearing, Judge Russell berated me as the representative of GPDSC for the agency's failure to promptly appoint attorneys to actively work on every client's case. She also vented her frustration with the ongoing failure of convicted defendants to receive attorneys immediately after being declared a conflict client. She notified me that from the date of the hearing, she would subpoena me to her court each time a post-conviction conflict defendant appeared without counsel, something that will become a full-time job as, I expect, more frustrated judges throughout the State follow this same path.

Our clients are also raising grievances regarding the delay in representation and our limited ability to investigate many of the *Garland* ineffective assistance claims. The Division consistently receives cases of the most difficult clients with the most serious offenses who are frustrated with their trial attorneys. The inability to move immediately on the client's case as soon as it is received in our Division aggravates the already explosive situation.

We appreciate any assistance you can provide in requesting Superior Court judges bear with this us during this tumultuous time for everyone involved in the justice system.

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<sup>1</sup> A detailed breakdown of the cases is attached.

<sup>2</sup> Ethically and practically, national standards contemplate that a lawyer can effectively handle only 25 appeals during a year. That number is based on handling only appeals where—as is *not* the case in Georgia—there is no further investigative work to be done and the only actions necessary are to review the fixed record of the proceedings, research the law and file a brief at the appellate court.