

# CAPITAL TRIAL DIVISION

## SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE YEAR END REPORT

August 2018

### INTRODUCTION

The Capital Trial Division of the South Carolina Commission on Indigent Defense is an office wherein three (3) attorneys are charged with representing capital defendants at the trial level. The attorneys in the Capital Trial Division are required to practice law at a level that meets the very high standards of capital defense demanded by the federal and state constitutions.

When the Capital Trial Division became fully staffed in early 2009, there were approximately forty (40) death penalty trials pending in South Carolina. Presently, there are approximately twenty (20) capital cases pending. The Capital Trial Division represents or is about to represent (18) of these (20) defendants. The Capital Trial Division has represented approximately fifty (50) capital eligible defendants since early 2009.

### Constitutional Requirement of Heightened Reliability in Death Verdicts

What is expected of capital defense attorneys in terms of their performance in a capital case can also be found in the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, American Bar Association, revised 2003. The South Carolina Supreme Court has looked to these guidelines to determine what constitutes constitutionally sufficient performance by defense counsel in capital cases. See *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (citing *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* and reversing capital trial due to defense counsel's fact investigation falling below that required by the guidelines); see also *Council v. State*, 380 S.C. 159, 670 S.E.2d 356 (2008)(citing *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* and reversing death sentence due to inadequate mitigation investigation).

The constitutional demands placed on trial counsel regarding his performance in a death penalty case are enormous and extraordinarily time consuming. The Capital Trial Division is required to meet these high demands in its mission to provide constitutionally adequate capital defense.

### THE CAPITAL TRIAL DIVISION

The Capital Trial Division currently consists of five (5) full-time staff members. There are three (3) attorneys, a paralegal, and Fellowship Attorney.

The primary mission of the Capital Trial Division is to undertake direct representation of indigent defendants facing a death penalty prosecution in South Carolina at the trial level. The Division also provides consulting services for lawyers engaged in representing a defendant at a

capital trial in South Carolina. The Division is also committed to providing capital defense training to lawyers in South Carolina.

## **Attorneys**

The Capital Trial Division employs three (3) full-time attorneys. Two are certified by the South Carolina Supreme Court as “death penalty qualified,” and all are eligible to be lead counsel on any death penalty case in South Carolina. The third attorney is second chair qualified and will become first chair qualified next year.

The Chief Attorney, Boyd Young has over fourteen (14) years of capital defense trial experience. He clerked for South Carolina Circuit Court Judge A. Victor Rawl (now retired). Before returning to South Carolina in 2008, Young worked as a full-time capital defender in Georgia for a number of years. Young teaches capital voir dire annually for the National Association of Criminal Defense Lawyers and has taught or lectured regarding capital defense in Alabama, Colorado, Georgia, Ohio, Pennsylvania, Louisiana and South Carolina. He has served as faculty at the Southern Public Defender Training Institute (now Gideon’s Promise) and the National Criminal Defense College. Young is also a founding faculty member of the South Carolina Trial College, and institution that provides trial skill instruction to new South Carolina public defenders.

The Deputy Attorney, William S. McGuire, has twenty (20) years of experience as a criminal defense trial lawyer. He also clerked for two South Carolina Circuit Court Judges; the Honorable Rodney Peebles (now retired), and the Honorable Daniel Pieper (now retired from the South Carolina Court of Appeals). McGuire has approximately twelve (16) years of experience representing defendants facing the death penalty. Before returning to South Carolina in 2008, McGuire was a full-time capital defender in Atlanta, Georgia. McGuire instructs attorneys from across the nation, annually, on the subject of capital voir dire at a CLE seminar co-sponsored by National Association of Criminal Defense Lawyers and the Southern Center for Human Rights. He has also served as faculty at the Southern Public Defender Training Institute (now titled Gideon’s Promise). McGuire has taught or lectured regarding capital defense, or criminal defense in general, in Alabama, Georgia, North Carolina, Oregon, Pennsylvania, Colorado, Louisiana and South Carolina. The South Carolina Association of Criminal Defense Lawyers named McGuire as the inaugural recipient of that organization’s Champion of Justice Award in 2009. In 2013 McGuire was named the South Carolina Public Defender of the year. McGuire is also a recipient of the American Jurisprudence Award. More recently, McGuire is also a founding faculty member of the South Carolina Trial College, and institution that seeks to provide trial skill instruction to new South Carolina public defenders.

Emily Kuchar, has four (4) years of capital defense experience and training. She was a Fellow Attorney with the Capital Trial Division for one year and then became a Public Defender with the Richland County Public Defender’s Office before returning to the Capital Trial Division as a full-time trial attorney.

## **Paralegal/Office Support Staff**

Mrs. Mulligan-Green is the Division's paralegal and office manger. In essence she, manages an office responsible for undertaking the complex litigation involving numerous death penalty trials.

The Fellowship Attorney position is currently open.

## **TRIAL LEVEL REPRESENTATION**

The Division has enrolled as counsel in approximately fifty (51) death penalty matters to conclusion. Only three of the defendants represented by the Division are currently under a sentence of death. One defendant had his death sentence reversed by the South Carolina Supreme Court on a judicial error and was resentenced to Life in Prison Without Parole.

There are approximately sixteen (20) death penalty cases in South Carolina that are pending and are appropriately considered to be capital cases. The three attorneys in the Capital Division are currently involved in the direct representation of eighteen (18) defendants facing death penalty prosecutions. One defendant is a co-defendant to a client represented by the Capital Trial Division and we are conflicted from representing him. We have offered representation in the other case, but his private counsel has rejected our offer for now.

In addition to the cases currently pending in the courts, in the past year the Capital Trial Division has resolved six (6) capital cases in the past year. **Steven Barnes** was a trial in the 11<sup>th</sup> Circuit resulting in a LWOP sentence. **Jerry Manigault, Kenneth Ancrum, and Carlos Perez** were all pending cases which we were able to resolve with pleas this year. **Crystal Johnson** was a double homicide from the 7<sup>th</sup> Circuit, the Capital Trial Division investigated the case and determined that Ms. Johnson was actually innocent of the charges. This information along with who was the likely perpetrator was turned over to the Solicitor's office and the charges against Ms. Johnson were dropped. **Christian McCall** was a case from the 16<sup>th</sup> Circuit, he was charged with shooting four police officers in an ambush resulting in one of the officer's death. The Capital Trial Division was able to get involved very early on, and work with the 16<sup>th</sup> Circuit Public Defenders Office to resolve the case with a plea to LWOP in under 5 months.

Respectfully submitted,  
S. Boyd Young  
Chief Attorney, Capital Trial Division