

MISSISSIPPI OFFICE OF CAPITAL POST-CONVICTION COUNSEL

5-YEAR STRATEGIC
PLAN FISCAL
YEARS 2024-2028



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Mississippi Office of Capital Post-Conviction
Counsel Strategic Five-Year Plan
2024-2028

1. Comprehensive Mission Statement

The mission of the Mississippi Office of Capital Post-Conviction Counsel (Office) is to provide effective legal representation to indigent inmates on death row in state capital post-conviction proceedings.

Mission Statement:

The CPCC advocates for the constitutional rights and inherent dignity of indigent persons sentenced to death in Mississippi. We provide the highest quality representation in post-conviction proceedings through diversity of experience, collaborative, and thorough investigation and case development, focused litigation strategies, and skilled writing and courtroom advocacy.

Core Values:

- Excellence
- Client-Centered Representation
- Respect
- Integrity
- Collaboration
- Diversity & Inclusion

2. Philosophy

The Office is dedicated to adhering to the mandates of the Courts, and to ensure that the United States Constitution and Mississippi Constitution are fully enforced. This Office is vested in each client's interests, and it seeks to provide fervent, competent, and effective assistance of counsel in an ethical and professional manner. Further, this Office is committed to treating each client with the utmost respect and professional care.

3. Relevant Statewide Goals and Benchmarks

Statewide Goal #1: Public Safety and Order

To protect the public's safety, including providing timely and appropriate responses to emergencies and disasters and to operate a fair and effective system of justice.

Relevant Benchmarks #1:

- Citizens should be confident that the Office complies with national standards for the representation of defense counsel in death penalty cases as outlined by the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases and as outlined in the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases as developed by the ABA Death Penalty Representation Project, as outlined by Mississippi Rule of Appellate Procedure 22 and as required by Mississippi Code Annotated §§99-39-1, *et. seq.*

Statewide Goal #2: Government and Citizens

To create an efficient government and an informed and engaged citizenry that helps address social problems through the payment of taxes, the election of capable leaders at all levels of government and participation in charitable organizations through contributions and volunteerism.

Relevant Benchmark #2:

- Engage the private bar to help handle indigent cases pro bono when caseloads reach a level that exceeds those that are acceptable for the representation of death sentenced individuals as defined by the American Bar Association.
- Provide the most cost-effective service without sacrificing competent and zealous representation for death-sentenced individuals.
- Reduce the amount paid for contracted cases with respect to attorney fees, outsourced investigative fees, travel, lodging and retention of experts.
- Stability. Reduce the costs associated with hiring and training employees by hiring competent people and striving to maintain their employment over the long term.
- Track intake and resolution of cases.
- Study other state post-conviction defense delivery systems and use the information gathered to recommend improvements to Mississippi's system.

Statewide Goal #3: Economic Development

To develop a robust state economy that provides the opportunity for productive employment for all Mississippians.

Relevant Benchmark #3:

- Maintain a staff of competent employees that are paid fair wages, and contract with competent outside counsel at a fair rate of compensation when a conflict or workload prevents us from representing a particular death-sentenced individual.
- Attend and participate in nationally recognized training programs to encourage confidence to businesses and workers wanting to locate here that our courts are fair.

Statewide Goal #4: Health

To protect Mississippians from risks to public health and to provide them with the health-related information and access to quality healthcare necessary to increase the length and quality of their lives.

Relevant Benchmarks #4:

Continue using a state employee assistance plan to educate and provide technical assistance to capital defenders representing clients on death row with mental health needs.

Work with the Mississippi Department of Corrections to better provide appropriate care for clients with mental health needs.

Statewide Goal #5: Human Services

To ensure that Mississippians can develop to their full potential by having their basic needs met, including the need for adequate food and shelter and a healthy, stable, and nurturing family environment or a competent and caring system of social support.

Relevant Benchmarks #5:

Continue employing a state employee assistance plan that provides counseling services to employees and family members as well as agency-wide programs to ensure employees can develop to their full potential.

Continue to work with the Mississippi Department of Corrections to ensure basic needs and constitutional rights are met for clients.

4. Overview of the Agency 5-Year Strategic Plan:

In capital cases, individuals have a right to effective assistance of post-conviction counsel. The single overriding objective of the Office is to fulfill this guarantee by providing effective representation to any person who cannot afford counsel under a sentence of death in Mississippi. This is accomplished today and will continue to be accomplished over the next five years.

Credibility with the court, our clients, and the public is vital. The Office's reputation in the federal and state court system is cherished, and it will continue to be at the good place it is now.

Before 2021, the Office has never interacted with the public to provide information about the work performed by the Office. Since 2021, the Office now posts its filings on its website, Facebook page, and LinkedIn page. The Office also now speaks to differing groups about the Office and capital post-conviction work in Mississippi, including the two law schools in our State, the Honors College at Mississippi State University, and various other legal committees. The Office's credibility and transparency helps ensure public understanding and confidence in Mississippi's judicial system.

Stability of staff is something lacking in this Office's history. Staffing of the Office is now stabilized. The Office has 5 attorneys, 2 mitigation specialists, 1 investigator, and 1 office administrator/paralegal. Prior to 2022, the Office had essentially two legal assistants, and each only had enough work to keep them busy for only a few hours a day. The Office was also without an experienced paralegal. To improve this, and save costs, the two legal assistant positions have been combined into an office administrator/paralegal position. The Office has hired an office administrator/paralegal with 20+ years' experience. There are no employees now on contract, and the Office has 9 PIN positions.

The office contracts out IT support and fiscal management/accounting support, as it is more cost efficient than hiring full-time employees (with or without PINs) to perform these services.

The Office anticipates some variation in case load but believes that a competent staff of 9 persons will be able to provide effective representation to our client base. In the event of temporary overload in this regard, the Office will contract with competent outside counsel to provide assistance on one or more cases until the case load becomes manageable in-house again. Preferably, and rather than contract and pay outside counsel, the Office will work with law firms willing to provide pro bono services. The Office currently has more than one actual innocence case. For one case, the Office works with a global law firm who is helping with the case pro bono.

The Office will continue to implement measures to help reduce costs associated with travel and the use of outside attorney and investigative assistance.

5. External/Internal Assessment

- a. A spike in crime and thus changes in the number of persons under sentence of death;
- b. Changes in sentencing of certain classes of individuals subject to the death penalty;
- c. Effectiveness of the Mississippi Office of the State Public Defender on the trial level to negotiate indictments from death to lesser included charges; achieving sentences of life without parole in death penalty trials; and remands on death penalty cases on direct appeal;
- d. Federal Courts returning cases that require additional petitions to be submitted to the Mississippi Supreme Court and/or require re-trial of either part or all the cases;
- e. Reduction in the number of Rule 22 qualified attorneys in the private sector;

- f. Changes in State and Federal case law that affect death sentenced individuals;
- g. Changes in Federal regulations and/or different interpretation of existing regulations that affect the time within which to file death penalty appeals.

5 (A). Internal Management Systems Used to Evaluate Agency's Performance

- a. Maintain a monthly output database;
- b. Yearly staff performance evaluation and assessment;
- c. Organizational chart is in place (see below);
- d. Staff meetings monthly and team meetings at least twice a month;
- e. Monthly budget review and case reports.

Each capital post-conviction case has at least 2 attorneys, a lead mitigation specialist, and an investigator. The Director is also knowledgeable about every case and every client. Our mitigation specialists and investigator are accountable to attorneys they are assigned to support, as well as to the Director.

As of 2021, the Office also has an internal peer review process for all filings. All filings are internally circulated to all five attorneys at least 48 hours before the due date. This review process is also now incorporated into the Office's policies and procedures.

Through a process of monthly staff and attorney meetings, and regular client team meetings, the Office determines how well cases are moving through the Office and the particular needs of each individual case. This allows the Office to project the amount of funding necessary to complete necessary tasks. Cost-saving measures are then applied when possible and appropriate. Management policies address the status and progress of each case, and to monitor personnel productivity.

6.1 Agency Goals, Objectives, Strategies, and Measures by Program for FY 2024 – FY 2028

Overall Goal One: Continue to provide high quality and ethical legal representation for persons convicted of capital crimes and sentenced to death in state post-conviction proceedings. (Miss. Code Ann. § 99-39-1 *et. seq.*)

Objective: To ensure that execution of death-sentenced individuals occurs only after the individual has been afforded a fundamentally fair conviction accompanied by due process, the effective assistance of counsel, and the benefits of all other safeguards afforded capital defendants under the federal and state

constitutions to promote efficacy, efficiency, and finality in death penalty proceedings.

Strategy: Engage in optimal performance to draft and file petitions, motions, and other pleadings. Demonstrate professionalism, competency, integrity, and character by participation in circuit court hearings and oral arguments before the Mississippi Supreme Court. Work collaboratively.

Measure: Maintain knowledge about all aspects of the law that relate to death penalty cases. Timely comply with changes in the laws that affect death penalty representation. Attend continuing legal education related to capital litigation. Study federal habeas opinions to learn of any alleged deficiencies in state court performance.

Overall Goal Two: Provide high quality and ethical legal representation for persons convicted of capital crimes and sentenced to death in federal habeas corpus proceedings—when possible under current federal and state law.

Objective: To maximize on the experience and knowledge base of current staff, continue to represent clients sentenced to death in federal court in habeas corpus proceedings when possible.

Strategy: Work collaboratively with the federal courts and habeas corpus resource counsel to identify cases for the Office to continue handling in federal habeas corpus proceedings when permitted under federal law and the Office's statutory jurisdiction.

Measure: Maintain knowledge with state and federal law on all aspects relating to death penalty cases. Timely comply with changes in the laws that affect death penalty representation. Attend continuing legal education related to capital litigation and federal habeas corpus proceedings.

Overall Goal Three: Draft and file high-quality amicus briefs in the state and federal courts on cases that relate directly to the convictions or sentences of our clients under the Office's statutory jurisdiction and duty to represent its clients in "ancillary matters related directly to post-conviction review of their convictions and sentences." Miss. Code Ann. § 99-39-107.

Objective: To maximize on the experience and knowledge base of current staff, file amicus briefs on behalf of the Office when needed in the Mississippi Supreme Court, Fifth Circuit Court of Appeals, and the U.S. Supreme Court. Amicus curiae briefs (also known as friend of the court briefs) can play an important, and sometimes critical, role in appellate advocacy by bringing relevant facts and arguments to a court's attention that the parties have not already addressed. The judicial system

functions at its best with well-constructed briefing on both sides of a case.

On May 5, 2022, the Office filed (after it was granted leave to file) its first amicus brief in the Mississippi Supreme Court in Case No. 2020-CA-00868-SCT.

Strategy: Identify the appropriate cases in which to file amicus briefs. Actively avoid filing any “me too” briefs—*i.e.*, briefs that simply repeat an argument already made by a party to the case. Work with counsel for the parties supported, as well as any other possible amici, to discuss what arguments need to be covered.

Measure: Keep a check a monthly check on cases that directly relate to post-conviction review of our clients’ convictions and/or sentences. To maximize efficiency and avoid redundancy, discuss joining other amicus briefs rather than filing our own, or invite others to join ours. A properly coordinated array of amicus briefs will hit all sides of the argument, with little or no overlap, and provide information for the Court about the scope of the problem and the effects of possible rulings.

**MISSISSIPPI OFFICE OF CAPITAL POST-CONVICTION COUNSEL
ORGANIZATIONAL CHART**

