

JOHNSON · TRUE · GUARNIERI · LLP

ATTORNEYS AND COUNSELLORS

Writers Email:

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December 21, 2011

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Governor Steve Beshear
Commonwealth of Kentucky
700 Capital Avenue, Suite 100
Frankfort, KY 40601

RE: KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents

Dear Governor Beshear:

On behalf of the *KBA Task Force on the Provision and Compensation of Conflict Counsel for Indigents*, thank you for meeting with members of the Task Force on December 16, 2011.

In FY 11, Kentucky defenders handled 7,276 conflict cases with 3,563 contracted out to private conflict counsel. 526 cases were handled by an adjoining office and 3,187 were handled internally with waivers from clients. The funding available to the Department of Public Advocacy in FY 11, limited conflict attorneys to an average of only \$406 per case.

The provision and compensation of conflict counsel for indigents in Kentucky is inadequate. It inhibits efficient processing of cases in the court system and impairs public safety. The current system presents significant ethical and financial exposure to the Commonwealth as evidenced by *Simmons v. State* (Iowa 2010) which held that a "fee limitation," or a "hard-fee cap" on the amount (\$1,500.00) paid to a conflict attorney handling a public defender-assigned appellate case impermissibly undermined the right of an indigent to effective assistance of counsel, and if enforced, would cause a "substantial chilling effect" on the constitutional rights of criminal defendants.

This current ethical and financial exposure will be substantially lessened with an improved structure and additional funding. A solution includes Department of Public Advocacy creating a conflict contract division that has responsibility for seeking qualified local attorneys to enter into contracts for conflict case representation with additional funding of \$5.2 million per year to DPA to provide reasonable compensation without hard caps.

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Your recognition of the problem and expression of interest is greatly appreciated. We are hopeful that the Department of Public Advocacy conflicts program can be addressed by you so as to insure an adequate quality of justice in the Commonwealth.

Please contact me if you or your staff require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Johnson', written over a horizontal line.

William E. Johnson, Chair
KBA Task Force on the Provision and
Compensation of Conflict Counsel for
Indigents

WEJ:djw

cc: Members of the KBA Task Force on the
Provision and Compensation of Conflict Counsel for Indigents