

Mississippi Office of Capital Post- Conviction Counsel



PERFORMANCE AUDIT
ISSUED June 28, 2017

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Mississippi Office of the State Auditor

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Mississippi Office of Capital Post-Conviction Counsel

June 28, 2017

Introduction

Title 99, Chapter 39, Article 1 of the Mississippi Code of 1972 created a uniform procedure within the Post-Conviction process for the collateral review of convictions and sentences. To further those efforts, the Legislature created the Mississippi Office of the Capital Post-Conviction Counsel (CPCC). The CPCC is tasked with representing indigent¹ defendants on death row after being appointed by the judge of the convicting court. Within each case appointed to CPCC, the petitioner or defendant seeks to receive post-conviction relief. As a part of the post-conviction process, the CPCC staff is usually required to partake in an extensive amount of travel to interview family and friends of the defendant and research the history of prior generations that could be beneficial in making the case for relief. The CPCC must ensure all required case deadlines are met and responses to motions filed by the prosecution are submitted. In order for the defendant to have a chance at being granted relief, all of the above mentioned tasks must be conducted thoroughly.

During this audit, OSA compared the current structure of CPCC to state laws and national standards, as well as the statutes from other southeastern states in order to assess levels of oversight and management operations. OSA attempted to determine whether CPCC staff had the mandated qualifications required by Rule 22 in the *Mississippi Rules of Appellate Procedure*, which outlines the standards and qualifications for attorneys appointed or retained to represent those under sentences of death in post-conviction proceedings. In addition, CPCC staff qualifications were assessed according to the requirements outlined in the American Bar Association's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. Finally, OSA attempted to determine whether or not CPCC operated in compliance with state law and has effective and sufficient internal controls to detect and/or eliminate opportunities for fraud, waste, and abuse.

This review revealed a severe lack of internal controls, questionable hiring practices, and an uncertain oversight mechanism. The comparison to national standards and other states showed some similarities but also exposed several areas of needed improvement. Since CPCC staff members are the last line of defense for those facing the death penalty, it is imperative that this agency operate as efficiently and effectively as possible. This report will discuss, in detail, the findings related to each of these topics, as well as provide recommendations that will help to enhance the overall operation of the agency.

¹ Defendants that cannot afford outside counsel as determined by the court.

Section 1: Is CPCC operating within the parameters of state law and national standards regarding oversight and staffing of the agency?

CPCC operates within the staffing parameters of state law and adheres to national standards, but the agency is not fully compliant with some reporting requirements and may benefit from a more formal oversight structure. We found that:

- CPCC is in compliance with state law regarding staffing. However, CPCC is not fully compliant with some reporting requirements, which appear to be the only formal external oversight mechanism currently in place to hold the CPCC accountable.
- CPCC does comply with national standards set forth by the American Bar Association (ABA) regarding the organizational structure of a “responsible agency,” which includes the assembly of a defense team and support services as outlined in the *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*.²

In addition, the agency is currently fully staffed, but the executive director has requested additional staff even though their caseload/workload does not appear to justify the request. These findings, along with alternative options to the current organizational structure, are discussed in more detail below.

CPCC is in compliance with state law regarding staffing. However, CPCC is not fully compliant with some reporting requirements, which appear to be the only formal external oversight mechanism currently in place to hold the CPCC accountable.

During the 2000 Regular Session, the Mississippi Legislature passed House Bill 1228, which created the Mississippi Office of Capital Post-Conviction Counsel.³ The CPCC was originally overseen by the Supreme Court but is now under the purview of the Governor’s Office.⁴ State law requires the CPCC to maintain and send the Administrative Office of Courts (AOC), the Chief Justice of the Mississippi Supreme Court, and the Governor’s Office a copy of the docket/roster of all death penalty cases originating in the courts of Mississippi. The docket/roster should include the county, district, and court associated with each case and be available to the public. Additionally, the roster should display the cases that are pending in state and federal courts, including the current status of each case. The executive director must also maintain a history of those death penalty cases filed since 1976 and submit a monthly report to the AOC that shows the agency’s activities, receipts, and expenditures related to each case.⁵

² American Bar Association (10/20/2003). *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. Retrieved from http://www.americanbar.org/content/dam/aba/migrated/2011_build/death_penalty_representation/2003guidelines.authcheckdam.pdf

³ *Mississippi Capital Post-Conviction Counsel Act*. Laws, 2000, ch. 569, § 1, eff from and after July 1, 2000. <http://billstatus.ls.state.ms.us/documents/2000/pdf/HB/1200-1299/HB1228IN.pdf>

⁴ [Miss. Code Ann. § 99-39-103](#)

⁵ [Miss. Code Ann. § 99-39-115](#)

The original legislation held that the director should be appointed by the Chief Justice of the Supreme Court with the approval of a majority of the justices voting.⁶ The director is now appointed by the Governor with the advice and consent of the Senate to a four year term. The Governor may remove the director from office upon finding that he/she is unqualified for the position, failed to perform the duties of the office, or acted beyond the scope of lawful authority. Further, staff attorneys and other staff are appointed by the executive director and serve at the will and pleasure of the director. Legislation also gives the director authority to contract with qualified private counsel if it is determined that there is a conflict of interest in a case or that the caseload exceeds the office's capacity to provide quality representation.⁷

Reporting Requirements. OSA requested a copy of the monthly case status reports for fiscal years (FY) 2014 to 2016. OSA found that CPCC provides a monthly case status report, as well as budget summaries and data from the Department of Finance and Administration (DFA) to the AOC, the Governor's Office, the Chief Justice of the Mississippi Supreme Court, and others.⁸ The opening letter of the report briefly describes case related activities from the previous month. The budget summaries from DFA include the available budget and actual expenditures for various line items, such as salaries, travel, services, commodities, and equipment. OSA's review of these reports revealed that although the CPCC is submitting the required reports, receipts for actual expenditures are not attached as specified by state law. In addition, it also appears that the reports are not open to the inspection of the public per state law.⁹

It is worth noting that these monthly reports appear to be the only formal external oversight mechanism in place to hold the CPCC accountable. They were designed for review by state government entities outside of CPCC and include information that implies that a review of cases and expenditures will take place. However, the information required in the reports is very narrowly focused and does not allow those reviewing the reports to determine how well the agency is being managed. Although the docket/roster appears to meet the needs of the Mississippi Supreme Court as it allows them to track the status of capital post-conviction cases, the reports do not currently appear to function as an oversight mechanism.

Staffing. Since inception, legislation dictated the actual makeup of the CPCC staff members. At that time, CPCC was to be composed of three attorneys (one of which served as director), one investigator, one fiscal officer, and one secretary/paralegal for a total of six staff members.¹⁰ Due to legislative changes, the number of staff members increased, but the law no longer outlined the actual makeup of the staff. Currently, CPCC has a total of eight full-time staff members - five attorneys (one of which serves as the director), one mitigation specialist, one investigator, and one paralegal/investigator. The CPCC is no longer required to have a fiscal officer on staff, so the accounting function is contracted to Cornerstone Consulting Group, Inc. Since current legislation is not very specific regarding the makeup of the agency, OSA could only review the total number of employees that CPCC is appropriated. Based on this, they are in compliance with their authorizing legislation as well as their current year appropriations. See Appendix C to view CPCC's organizational chart as submitted to the Legislative Budget Office (LBO) as part of their budget request for FY2018.

⁶ *Mississippi Capital Post-Conviction Counsel Act*. Laws, 2000, ch. 569, § 1, eff from and after July 1, 2000.
<http://billstatus.ls.state.ms.us/documents/2000/pdf/HB/1200-1299/HB1228IN.pdf>

⁷ *Miss. Code Ann. § 99-39-103*

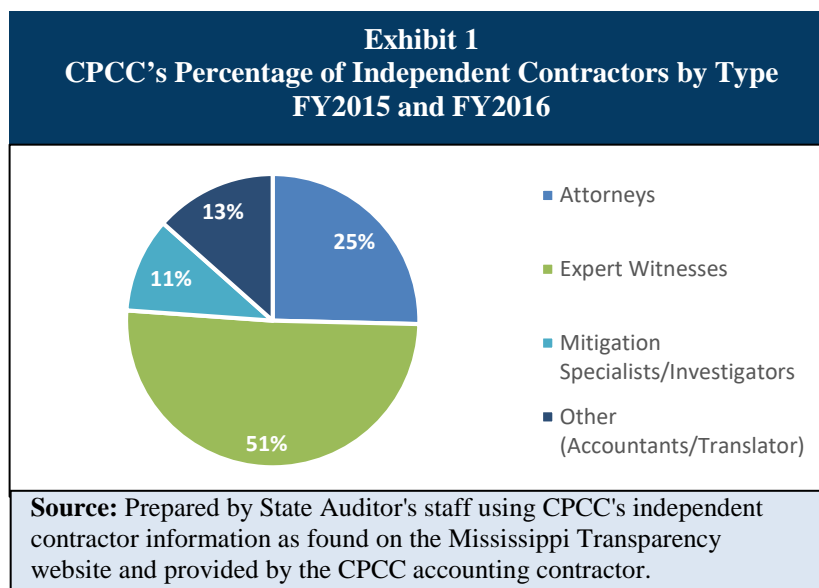
⁸ It should be noted that the format of this report may have been established upon creation of the office in 2000 and maintained by succeeding directors.

⁹ *Miss. Code Ann. § 99-39-115*

¹⁰ *Mississippi Capital Post-Conviction Counsel Act*. Laws, 2000, ch. 569, § 1, eff from and after July 1, 2000.
<http://billstatus.ls.state.ms.us/documents/2000/pdf/HB/1200-1299/HB1228IN.pdf>

OSA noted that in their most recent budget request, CPCC requested additional staffing to “fulfill its mission and handle an increasing caseload.”¹¹ The request was for one additional mitigation specialist position (\$48,000 plus \$14,800 fringe totaling \$62,880) and one additional paralegal position (\$34,000 plus \$10,540 fringe totaling \$44,540), for a total additional cost of \$107,420. According to their budget request for FY2018, the addition of these positions will lessen the agency’s dependence on costly outside contractors and better control the costs and the efficiency of the legally mandated work of the agency. The legislature approved one additional full-time, unspecified position for FY2018, which will bring them to a total of nine staff members. However, the agency did not receive additional funding to cover the cost of an added employee.

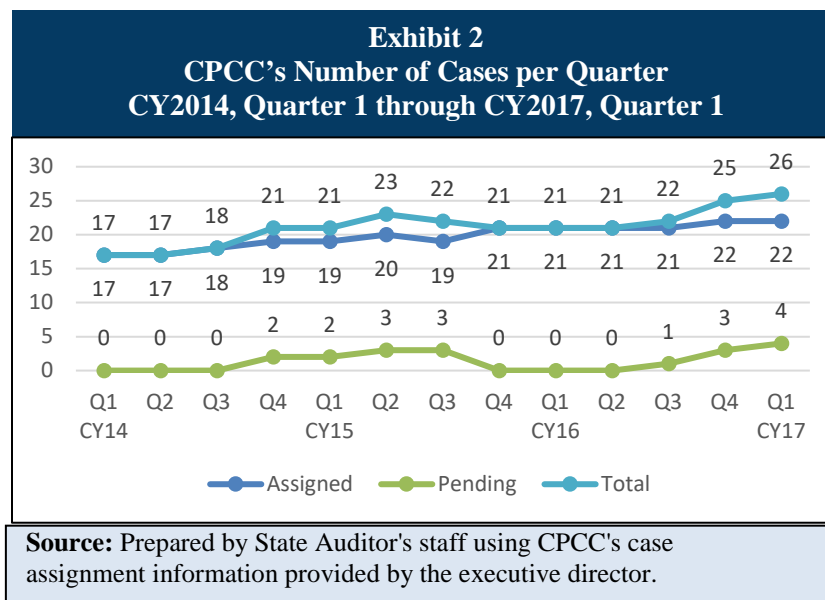
OSA attempted to determine whether there is sufficient evidence to support a request for additional staff based on the agency’s current operations. OSA started by reviewing CPCC’s contracts for fiscal years 2015 and 2016 available on the Mississippi Transparency website since the executive director cited contract costs as a reason for needing additional staff. OSA found that the contractual agreements were for outside counsel (25%), expert witnesses (51%), mitigation specialists/investigators (11%), and other independent contractors, such as accountants (13%). Since only 11% of CPCC’s contracts are for mitigation specialists, there is insufficient evidence to support the need for hiring an additional mitigation specialist. However, these contracts do not capture contract workers who work directly at the agency. Therefore, we are unable to determine whether there is an actual need for additional staffing based on the hiring of outside contractors or an increasing caseload as noted in the budget request. Exhibit 1 shows the percentage of CPCC’s independent contractors by type since June 28, 2014 as found on the Mississippi Transparency website and provided by the CPCC accounting contractor.



OSA also reviewed CPCC’s case assignments, as provided by the executive director, over a three year period from calendar year (CY) 2014 to the first quarter of CY2017 to determine whether the agency’s caseload supports the request for additional staff. The OSA found that the number of cases assigned to the CPCC has increased slightly since the first quarter of CY2014. According to the *Mississippi Public Defender Task Force Report*, the increase in CPCC’s cases is due to ineffective representation under a previous administration, which caused cases to be sent back to the first phase of the capital

¹¹ Mississippi Legislative Budget Office. *Budget Request Narrative – (Provided by CPCC)*.
<http://www.lbo.ms.gov/PublicReports/DownloadReportFile?ReportId=35634>.

post-conviction process.¹² It should be noted that caseload on its own is not a fair indicator of the actual work being done or whether staff is sufficient. This is because there are variations in case size and status that influence the amount of work actually being performed at any given time. Exhibit 2 shows CPCC's number of cases per quarter for the first quarter of CY2014 through the first quarter of CY2017.



Since caseload alone is insufficient to determine staffing needs, OSA also reviewed the CPCC's workload. This involved assessing the number of cases at various stages as they move through the court system. An analysis was done using the staff assignments document provided by the CPCC executive director in conjunction with the state post-conviction roster that is available on the website of the Office of the State Public Defender, excluding cases assigned to outside counsel.¹³ The following outlines the different stages that a case traverses once an appeal has been filed:

Stage 1 (Motion Due): This is the most labor intensive stage and must be completed within one year or less by statute. The actual amount of time required to complete this stage depends on the complexities of the case. Both attorneys and investigators/mitigation specialists are heavily involved in this stage as they are working to collect evidence in order to file a motion, which is a request to modify a client's sentence, request a new trial, or to consider new evidence not previously available.

Stage 2 (Motion Filed): At this point, a legal brief has been filed with all the supporting evidence and CPCC staff assigned to the case are awaiting a decision from the court.

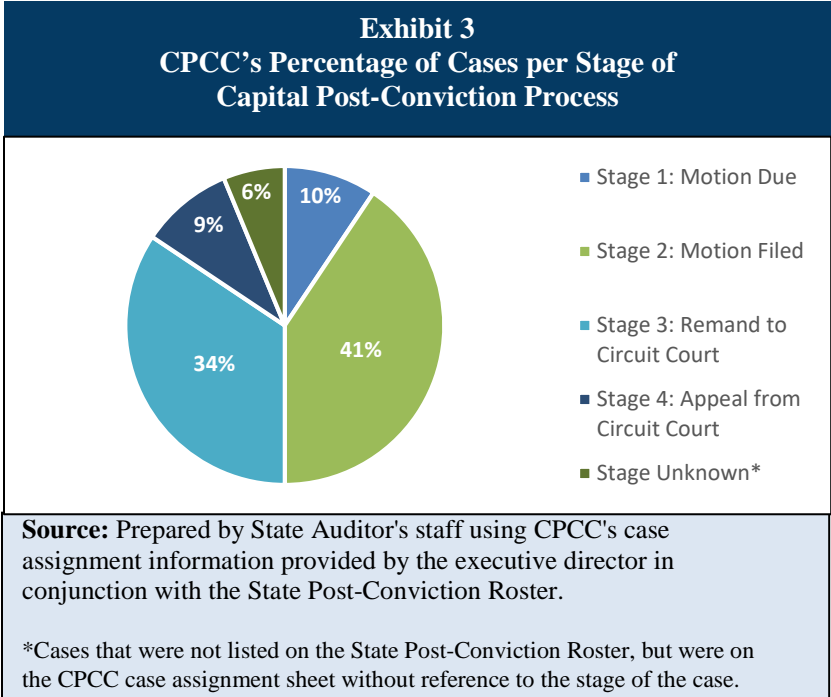
Stage 3 (Remand to Circuit Court): Work on cases increases at this stage as preparations are being made to go to trial.

Stage 4 (Appeal from Court): The defense or the prosecution can file an appeal with the Circuit Court so it is on record that there are concerns about errors in the legal proceedings. Work at this stage is relatively minimal.

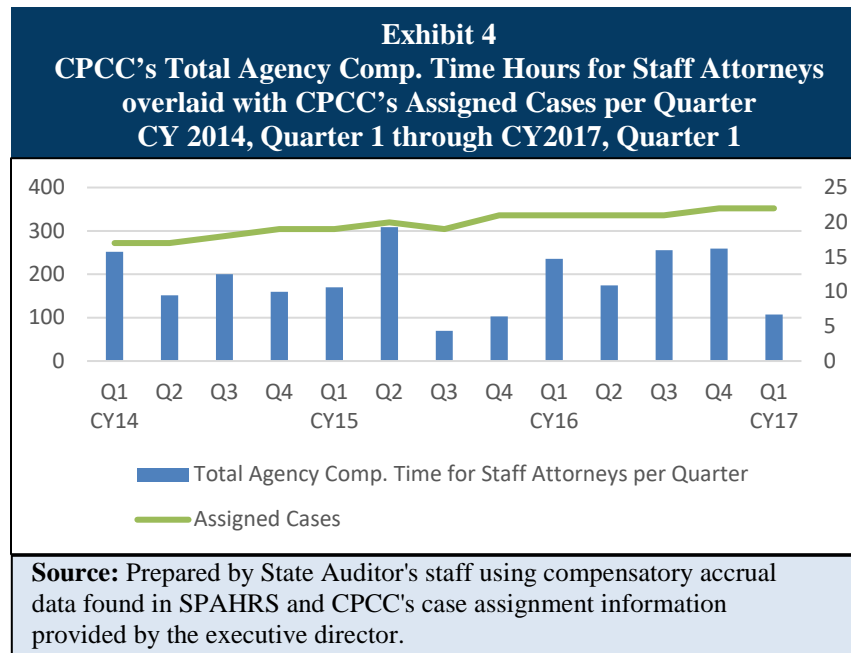
¹² *Mississippi Public Defender Task Force Report* (2016). Retrieved from <http://www.ospd.ms.gov/Task%20Force/Mississippi%20Public%20Defender%20Task%20Force%202016%20Report.pdf>.

¹³ Office of State Public Defender. *State Post-Conviction Roster*. Retrieved from <http://www.ospd.ms.gov/CDForms/Post%20Conviction%20Roster.pdf>.

Ideally, cases are distributed evenly across the four stages. However, most of CPCC’s current cases are in the second stage, so there does not appear to be a lot of work currently on those cases. The stage with the heaviest workload makes up only 10% of CPCC’s assigned cases. Based on a review of CPCC’s current workload, there does not appear to be a need for additional staffing. Exhibit 3 shows the percentage of cases per stage of the capital post-conviction process.



The accrual of compensatory, or comp. time, was also used as an indicator to determine whether or not staff are overburdened by their caseload. OSA reviewed CPCC’s comp. time accruals for the same period as the review of CPCC’s caseload from the first quarter of calendar year (CY) 2014 to the first quarter of CY2017. According to CPCC staff, comp. time tends to be accrued due to situational issues whereby one is required to work outside of normal hours to meet with clients or to meet deadlines. OSA found that the amount of compensatory time accrued by CPCC staff attorneys does not coincide with their caseload. In fact, there was a drop in the amount of total agency comp. time accrued by all staff attorneys in CY2017 even though they have a total of twenty-two (22) cases compared to seventeen (17) at the beginning of 2014. This appears to corroborate CPCC staff’s assertion that the accrual of comp. time is dependent upon the stage of cases rather than caseload. Exhibit 4 shows the total agency comp. time accrued by staff attorneys per quarter from the first quarter of CY2014 through the first quarter of CY2017.



Based on a review of CPCC's independent contracts, caseload/workload, and compensatory time accruals, OSA concluded that there is insufficient evidence to support CPCC's request for additional staff. Additionally, according to the *Mississippi Public Defender Task Force Report*, the general trend for death sentences, death sentences affirmed, and cases assigned to CPCC is decreasing, which indicates that in the future the CPCC will potentially need less staff.¹⁴

Recommendation 1: CPCC should fully comply with state law reporting requirements, which includes providing the Administrative Office of Courts (AOC) expenditure receipts and a description of associated activities, as well as making the monthly reports open to inspection by the public. This can be achieved through a formal policy stating that the reports are not confidential should a member of the public request the report(s). Alternatively, CPCC should consider coordinating with the AOC to have the reports posted on their website or develop their own website that would provide access to the reports along with other agency information.

Recommendation 2: The legislature should consider creating a formal oversight structure to ensure the CPCC is fully complying with state law and has a means by which to monitor workload and staffing needs. If the monthly reports are intended to be a form of oversight, the legislature should reassess the reporting requirements to ensure the information being reported encompasses the data needed to provide sufficient oversight of the CPCC. Once this is done, the existing reporting requirements should be changed accordingly. See page 11 for a review of other states reporting requirements and Appendix D contains a chart for comparison of Mississippi statute to other states.

¹⁴ *Mississippi Public Defender Task Force Report* (2016). Retrieved from <http://www.ospd.ms.gov/Task%20Force/Mississippi%20Public%20Defender%20Task%20Force%202016%20Report.pdf>.

CPCC does comply with national standards set forth by the American Bar Association (ABA) regarding the organizational structure of a “responsible agency,” which includes the assembly of a defense team and support services as outlined in the *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*.

The ABA outlines national standards for the designation of a “responsible agency” and the assembly of a defense team and supporting services.¹⁵

A “responsible agency” includes, but is not limited to, the following:

- a post-conviction defender office that utilizes staff attorneys, private counsel, or both to provide representation in death penalty cases;
- an agency that is independent of the judiciary, which ensures that the capital post-conviction function is free from political influence; and
- an agency with the ability to select lawyers for specific cases rather than the judiciary or elected officials.

The assembly of a defense team and supporting services includes, but is not limited to, the following:

- no fewer than two attorneys;
- an investigator;
- a mitigation specialist;
- one of the aforementioned should be qualified to perform mental health screenings;
- the agency should be able to obtain the assistance of experts, investigators and other professionals independent of the government; and
- the agency should be able to obtain outside assistance on a confidential basis.

Organizational Structure & Staffing. CPCC does adhere to the national standards outlined above as set forth by the ABA regarding the designation of a responsible agency and the assembly of a defense team and support services. However, there are additional standards for a responsible agency that are not being met and will be addressed in section two of this report.

CPCC compared to other southeastern states.

In order to provide alternative options to the current organizational structure of CPCC, OSA completed a review of the statutes currently in place in other southeastern states, specifically those

¹⁵ American Bar Association (10/20/2003). *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. Retrieved from http://www.americanbar.org/content/dam/aba/migrated/2011_build/death_penalty_representation/2003guidelines.authcheckdam.pdf

related to oversight and personnel. In total, the statutes of ten states were reviewed. OSA narrowed them down to five states for ease of comparison. The states included in the review are as follows: Florida, Kentucky, North Carolina, Tennessee, and Virginia.¹⁶

Organizational Structure/Oversight. OSA found that Tennessee's Office of Post-Conviction Defender (TOPCD) is the only agency reviewed that is organized as a single independent agency, like the CPCC, with the sole purpose of providing legal representation to persons under sentences of death. However, unlike CPCC, TOPCD reports to an oversight commission, which strictly handles administrative duties, such as budget, staffing, and caseload concerns. Florida's Capital Collateral Regional Counsel Offices' sole purpose is also to represent those under sentences of death, but they are organized regionally rather than centrally. The other states reviewed offer post-conviction defense services within an agency or defense system along with other indigent defense services. Florida and the other states reviewed also report to an oversight commission or board that provides guidance, such as standards for caseload, performance, and minimum qualifications.

Since reports are often used as an oversight mechanism in governance, OSA reviewed each state's reporting requirements. OSA found that four of the five states reviewed require the submission of an annual report. For example, the Kentucky Department of Public Advocacy must file a report with the Legislative Research Commission providing data such as, the total number of cases assigned to the department; average number of cases per department attorney; funding available to the department; and average amount of state funds expended per assigned case.

Personnel. OSA found that the directors in two of the five states reviewed are appointed by the Governor, like Mississippi. In each of these states (Florida and Kentucky) the Governor makes appointments based on recommendations from others. In Florida, the Supreme Court Judicial Nominating Commission submits three recommendations to the Governor, which he or she may choose to reject at which time the Commission will submit three new candidates for consideration. In Kentucky, the Public Advocacy Commission also submits three recommendations to the Governor following the receipt of applications and an interview process. In the other three states (North Carolina, Tennessee, and Virginia) director appointments are made by the oversight commission. Statutory language regarding minimum qualifications for the director in each of the states reviewed is somewhat vague, but Florida and Kentucky do specify that they must have at least five years of experience in the practice of law.

Four of the five states reviewed (Florida, Kentucky, Tennessee, and Virginia) also provide guidance within statute regarding the employment of agency staff or contractors. Tennessee and Kentucky allow the executive director to hire according to need without providing additional guidelines or restrictions beyond funding, which is similar to CPCC. Two of the states reviewed (Florida and Virginia) go further and provide specific minimum qualifications for attorneys. Appendix D contains a chart for comparison of Mississippi statute to the five states reviewed.

The primary difference between CPCC and other southeastern states is that CPCC does not report to an oversight commission or board. Based on this review, it appears that there is more that can be done to ensure that the CPCC is held accountable in its mission to provide quality representation to indigent parties under sentences of death.

¹⁶ See Appendix D to view all of statutes mentioned below.

Recommendation 3: The legislature and/or Governor should consider reviewing the statutes of other states that could be implemented in Mississippi to ensure there is proper oversight of the agency and that appropriate personnel are hired. Appendix D contains a chart for comparison of Mississippi statute to other states.

Section 2: Does the executive director ensure the appropriate appointment and quality performance of all staff members who represent indigent parties under sentences of death in post-conviction proceedings?

Overall, the executive director does not ensure that all staff attorneys meet the minimum requirements of their respected positions and does not conduct formal performance evaluations on all employees. OSA found that:

- The CPCC executive director does not ensure that all staff have the requisite qualifications to perform their jobs and give high quality representation to clients.
- The CPCC executive director does not formally conduct performance evaluations or reviews for staff members.
- The CPCC does not follow ABA's *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*.

In addition, OSA found that CPCC does not fall under the purview of the Mississippi State Personnel Board (MSPB), and as a result, is not required to follow the guidelines of MSPB regarding recruitment, hiring, or performance evaluations. These findings are discussed in more detail below.

The CPCC executive director does not ensure that all staff have the requisite qualifications to perform their jobs and give high quality representation to its clients.

Recruitment Process. The CPCC is not under the purview of MSPB, therefore, they are not required to adhere to the policies or provisions within MSPB's recruitment guidelines. In addition, the executive director of CPCC does not have any formal policies or procedures in place to guide the recruitment process. According to the executive director, to hire employees, CPCC uploads position openings to Magnolia Listserv, Defense Bar, and other websites (excluding the State Personnel Board). She did not specify any additional steps in the informal process beyond this.

In an attempt to review the credentials of staff upon hire and ensure that a formal hiring process took place, OSA requested personnel files for each of the current employees. The request revealed the executive director does not maintain applications, resumes, documentation regarding job postings, or any other information verifying a formal process. Furthermore, the executive director was unable to verify any method used for choosing qualified and experienced applicants for interviews and job selection. This lack of policies and structure in the recruitment process has led to the CPCC hiring unqualified staff employees.

Rule 22. The Mississippi Rule of Appellate Procedure 22(d), adopted on August 21, 1996 by the Supreme Court, sets the minimal standard for defense counsel that represents defendants that are sentenced to death. The intent of the Rule is to ensure that each petitioner or death row inmate receives qualified and competent counsel. The Rule requires attorneys to have the experience, credentials, and commitment necessary to give quality counsel to the defendants under the death penalty to assure the public that the affirmed decision of death is the right decision.

The Rule was amended on April 28, 2016. The change was the product of a long dispute over contradictory language within the Rule. A section of the rule required staff attorneys to have prior experience as counsel in the appeal of at least three felony convictions within five years immediately preceding case appointment. Or, “In the alternative, have within such period been counsel in the appeal of at least six felony convictions, at least two of which were appeals from murder convictions, and counsel in at least two post-conviction proceedings” (M.R.A.P. 22(d) 2007 version). However, CPCC does not handle appeals of felony convictions because employees are limited by §99-39-107 to only represent and review death penalty convictions appointed to CPCC and are not allowed to work on non-CPCC cases.¹⁷ It is clear that after working within CPCC for more than five years, staff attorneys would not be qualified under the pre-amended Rule 22 requirements. This was the precise argument made by a staff attorney with CPCC that led to the 2016 amendment. Changes in the Rule addressed the language that would have otherwise limited an employee to be Rule 22 qualified only up to five years.

When OSA requested personnel files, the executive director asked each employee in the office to print a copy of their resume. OSA reviewed these resumes, individual interviews, court transcripts involving CPCC, and continuing legal education information supplied by each staff attorney. In addition, OSA conducted individual interviews on Rule 22. OSA compared the information provided in each item, as well as the information from the individual interviews to the Rule 22 qualifications before and after the 2016 amendment. Therefore, OSA could not verify that every position was made available to the public or that an adequate hiring process took place for each current employee.

Prior to the 2016 amendment, the executive director of CPCC did not hire qualified attorneys according to the requirements under Rule 22(d). Instead the executive director hired personnel with chancery, and teaching experience, but no felony conviction experience. It was later mentioned in the interview process “that no staff attorney was explicitly Rule 22 qualified when they were hired.” This is evident in the *State of Mississippi v. Jason Lee Keller*¹⁸ case, where transcripts stated that a staff attorney of CPCC and two contracted attorneys acknowledged to the court that they were not qualified under Rule 22 to represent the defendant at that time¹⁹. In this hearing, the judge determined that the three attorneys on behalf of the defendant could not argue the case. Furthermore, the presence of the executive director was required in the follow up hearing in order for the case to proceed.

Two attorneys were hired by the current executive director following the 2016 amendment. OSA found that only one of the attorneys held the necessary credentials required under Rule 22 at the time of hire. However, the new language in Rule 22, coupled with the change that removed the requirement that all defense counsel have specific experience in felony appeals²⁰, led to OSA concluding that, at

¹⁷ Mississippi Code of 1972 Annotated § 99-39-107

¹⁸ [Jason Lee Keller VS State of Mississippi Transcript.pdf](#)

¹⁹ Jason Lee Keller VS State of Mississippi transcript regarding Rule 22 can be found in the supreme court general docket under Exhibit C (May 12th Transcript).

²⁰ Mississippi Rule of Appellate Procedure Rule 22(d)

the time of this report, all staff attorneys employed at the CPCC are, in fact, Rule 22 qualified. See Appendix E for the Rule 22(d) language prior to the 2016 amendment.

Regardless of the rule changes, the matter in question is the initial hiring of unqualified personnel. Not only do those actions violate the trust of the public, but they do not take into account that quality representation from the CPCC is the last line of defense for defendants on death row in the state of Mississippi.

Recommendation 1: The CPCC executive director should ensure an adequate qualifications review takes place prior to hiring staff to ensure high quality representation is consistently being given to inmates sentenced to death. Without such a review, the CPCC will continue to be vulnerable to the hiring of unqualified personnel.

The CPCC executive director does not formally conduct performance evaluations or reviews for staff members.

Performance evaluations are an important tool to ensure staff members are providing high quality representation to indigent parties under sentences of death. CPCC is not under the purview of MSPB, so they are not required to have a formal evaluation process in place. However, ABA standards express how this important tool is needed in giving qualified and competent counsel.

Performance Evaluation/Review. OSA requested performance reviews and a list of key performance indicators from the executive director to measure the effectiveness of the performance evaluation process. In an effort to evaluate the performance of staff, the CPCC allows its employees to conduct self-evaluations. CPCC also requires random, in-house tests, drafted by the director, to be completed as a means to measure the knowledge of staff on cases that may directly or indirectly affect current cases that have been assigned to the office. OSA was unable to determine how the information gathered from the self-evaluations and tests are used to evaluate performance or provide feedback/guidance when improvements are needed.

OSA concluded that the self-evaluations, random testing, and lack of feedback does not adequately measure the performance of staff or enable CPCC to review historical trends in performance. CPCC has no policy, procedure, or guideline in place to ensure a formal performance review is conducted.

Recommendation 2: CPCC should conduct formal performance evaluations, similar to the one set forth by MSPB, to document and ensure a formal evaluation is done and appropriate feedback is provided, as well as to make certain there is no historical trend of declining performance, unprofessional practices, and unethical acts. This formal process would give the executive director an adequate measure of staff performance, as well as show staff where improvement is needed.

The CPCC does not follow ABA *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*.

The American Bar Association provides numerous resources, recommendations, and standards for attorneys, law firms, and other public and private entities in the field of law. The guidelines set forth by the ABA are designed to ensure that the “Responsible Agency” gives high quality representation to their clients.

American Bar Association. ABA recommends that the “Responsible Agency” has specific policies and procedures in place to support the recruitment of qualified and competent attorneys to represent individuals sentenced to death, as well as to measure performance of staff. ABA also recommends that the “Responsible Agency” review the qualifications of attorneys by utilizing all available resources, such as reaching out to judges, other attorneys, former clients, writing samples, and previous supervisor(s) to gain an in-depth understanding of the competency and experience of the attorney in question.²¹

Despite the recommendations laid out by the ABA, the CPCC executive director has no formal policy or procedure to guide the office in recruitment, hiring, or in the evaluation of staff performance. OSA reached this conclusion after reviewing the recommendations of ABA and receiving no formal policies or procedures from CPCC.

Recommendation 3: CPCC should utilize the recommendations laid out by ABA in the “Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases” to create policies, procedures, and guidelines to ensure high quality representation is given throughout all phases of post-conviction proceedings. These guidelines would provide structure in the decision making of staff recruitment, hiring, and performance evaluation processes.

Section 3: Is the Mississippi Office of the Capital Post-Conviction Counsel fiscally operating in compliance with state laws and are there sufficient internal controls to detect and/or eliminate opportunities for fraud, waste, and abuse?

The Mississippi Office of the Capital Post Conviction Counsel does not operate in full compliance with state laws and there are insufficient internal controls to detect and/or eliminate opportunities for fraud, waste, and abuse.

- CPCC does not operate within state guidelines for travel vouchers.
- CPCC does not operate within state guidelines for travel cards.
- CPCC does not operate within state guidelines for procurement cards.
- CPCC does not operate within state guidelines for petty cash.
- CPCC does not follow standard practices for contracts.

There is a severe lack of internal controls over all areas reviewed, which included travel vouchers, travel cards, procurement cards, petty cash, and contracts. This lack of internal controls has led to the agency paying for travel and purchases that violate state law and/or DFA issued guidelines. Further, this disregard of laws and guidelines has and, if not corrected, will possibly continue to lead to fraud, abuse, and misuse of state taxpayer dollars.

²¹ American Bar Association “Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases” Guideline 3.1

CPCC does not operate within state guidelines for travel vouchers.

Mississippi Code Section 25-3-41, Annotated, establishes the parameters for travel reimbursement that each state, county, or municipal employee may receive for travel “... in the performance of his official duties.”²² This code section also includes language that requires the Mississippi Department of Finance and Administration (DFA) to set additional rules and regulations that dictate how each travel category should be handled. As a result, DFA’s Office of Purchasing, Travel, and Fleet Management issued very detailed guidance regarding the travel policies and procedures that are to be followed by each agency and employee. These guidelines include specific procedures for every aspect of travel, including, but not limited to, mileage reimbursements, parking fees, baggage fees, meals, and tips provided to hotel staff. Although these guidelines are specific, DFA does allow each agency to create additional, more stringent policies to further regulate travel re-imbursement for its employees.²³

The travel manual issued by DFA also outlines specific duties for each department director and the agency/department travel coordinator. These duties range from ensuring employee compliance with all state and agency policies to acting as a liaison between the agency and the State Travel Coordinator.²⁴ The travel voucher itself contains a statement attesting to the truth and accuracy of the information on the voucher. Additionally, the possible consequences for submitting fraudulent claims are listed at the bottom of the voucher and reads as follows: “PENALTY FOR FRAUDULENT CLAIM - fine of not more than \$250; civilly liable for full amount received illegally; removal from office or position held (Section 25-1-81 and 25-1-91, Miss. Code Ann.-1972).”²⁵ See Appendix F for a blank travel voucher.

The legislatively established purpose of the CPCC is “... providing representation to indigent parties under sentences of death in post-conviction proceedings.”²⁶ This representation is not just limited to attorneys filing motions and attending hearings, but it also includes a very detailed investigation into the background of the client and his/her family. A thorough investigation of this magnitude includes reviewing residential, medical, educational, criminal, and even psychological records belonging to the client and as many family members, both living and deceased, as possible. This enormous undertaking requires CPCC staff not only to travel to various cities and counties within the state, but also to various states outside of Mississippi. In addition to this type of travel, CPCC staff also travels to various states to obtain continuing professional education hours.

OSA conducted a random sample of ten percent (10%) of all travel vouchers for fiscal years (FY) 2014, 2015, and 2016, which yielded a total sample of forty-three (43) vouchers – seventeen (17) from FY2014, fourteen (14) from FY2015, and twelve (12) from FY2016. Since OSA auditors were informed that there are no written agency policies related to the completion or processing of travel vouchers, the travel manual that was issued by DFA, which succeeds agency travel policies, was the only tool used to evaluate the compliance of the CPCC’s travel vouchers. This evaluation revealed a severe lack of internal controls over travel vouchers and irregularities related to the supporting

²² [Miss. Code Ann. § 25-3-41](#)

²³ State of Mississippi Department of Finance and Administration Office of Purchasing Travel and Fleet Management (2016) State Travel Policy Rules & Regulations. Retrieved from <http://www.dfa.ms.gov/media/4787/travel-manual-1216.pdf> on April 27, 2017.

²⁴ State of Mississippi Department of Finance and Administration Office of Purchasing Travel and Fleet Management (2016) State Travel Policy Rules & Regulations. p. 9.

²⁵ Travel Voucher obtained from link on DFA Office of Purchasing, Travel, and Fleet Management’s website. Retrieved from <http://www.dfa.ms.gov/dfa-offices/financial-reporting/maapp-manual/sections-13/> on April 27, 2017.

²⁶ Miss. Code Ann. § 99-39-105

documentation required to process these vouchers. A detailed chart of the findings can be found in the Appendix G. A summary of the violations that were found are as follows:

- Lack of cost comparison
- Lodging expenses not supported with receipts
- Lacking appropriate verification and/or approval signatures
- Meals were not documented correctly
- Meal tips exceeded 20% allowed
- Questionable use of rental vehicle/fuel
- Inaccurate and missing documentation
- Seemingly excessive hotel charges
- Receipts altered and/or lack date/location
- Incorrect amount paid for mileage

These violations were not attributed to one particular employee but were spread across most of the CPCC staff. A majority of the vouchers in question were signed by both the executive director and the consulting group on contract with CPCC.

These violations are of grave concern to the OSA. The fact that a vast majority of the travel vouchers sampled violate the policies and procedures established by DFA, along with supporting state law, signifies a lack of adequate internal controls and accountability by the CPCC executive director and the contracted consulting group.

Recommendation 1: In light of the findings that are listed above, OSA recommends that immediate action is taken by the CPCC executive director. Each employee should be provided the most recent copy of the DFA travel manual, and both the executive director and the contracted consulting group should train all staff members on guidelines outlined in the manual and the proper method for documenting expenses and completing a travel voucher.

Recommendation 2: The executive director should create agency internal controls to ensure that each voucher adheres to the established DFA policies and any applicable state laws.

Recommendation 3: Verbal and/or written reprimands, as detailed in the MS State Employee's Handbook, should be issued to any employee who consistently fails to adhere to any agency and/or DFA policy related to travel.²⁷

²⁷ Mississippi State Personnel Board (2016) Mississippi State Employee Handbook. Chapter 7, p. 1-7. Retrieved from <http://www.mspb.ms.gov/media/62798/employee%20handbook%20fy%202017%20full.pdf> on April 27, 2017.

Recommendation 4: The executive director should verify that all expenses submitted for reimbursement are legitimate and verified expenses and all required documentation is properly submitted.

CPCC does not operate within state guidelines for travel cards.

The MS Department of Finance and Administration provides another means for state agencies and/or state employees to cover certain travel expenses. This method is by way of a travel card. A travel card is essentially a credit card that can be used to pay for airfare, lodging, tolls, etc. for work related travel expenses. The use of this card allows the agency/employee to pay for particular costs without the need for direct reimbursement or requesting travel advances.²⁸

As with travel reimbursements, DFA has also established specific guidelines that must be followed while using this card. These guidelines establish the types of cards available to the agency/employee, acceptable and unacceptable card uses, the duties of the agency program coordinator, and card liability. Just as the travel manual does, the travel card guidelines allow each agency to establish additional, more restrictive policies for employees utilizing the travel card.

Each full-time employee at CPCC, which was eight at the time of this report, was issued a travel card. The agency also has what is called a ghost account, which is an account that is issued to the program coordinator but is not a physical card account. This account allows the account holder to pay for certain travel costs of non-employees, such as expert witnesses or interns, as well as CPCC staff. Although this account can be used to make payments over the phone or on the Internet, it is still bound by the authorized expenses list detailed in the guidelines.

Initially, OSA reviewed a random sample of ten percent (10%) of all travel card monthly statements for fiscal years 2014, 2015, and 2016. After numerous problems were found within the ten percent sample, the sample size was increased to thirty percent (30%), which included nine (9) statements from FY2014, thirty (30) statements from FY2015, and twenty-five (25) statements from FY2016. Again, since the agency does not have any written policies related to travel card usage, OSA auditors used the DFA manual to determine compliance.

The most egregious issue in this area was the payment of the travel card statements without any supporting documentation for the charges. Approximately sixty percent (60%) of the statements reviewed fell into this category. The DFA issued travel card guidelines specifically state that “The cardholder shall obtain an itemized receipt for each transaction....”²⁹ Other findings noted in this area included no affidavit for missing receipts, claims for gas receipts when there was no record of a rental car, modified receipts to fit a certain circumstance, and rental of large and/or luxury vehicles without any documented reason. A detailed chart of the findings can be found in Appendix H.

Recommendation 5: Based on the findings related to travel cards, OSA recommends that all CPCC staff, including the contracted consulting group, review the most updated travel card manual to ensure that each cardholder has a thorough understanding of all established guidelines.

²⁸ Mississippi Department of Finance and Administration’s Office of Purchasing, Travel, and Fleet Management (2014) Travel Card Guidelines Policy and Procedures Manual. Retrieved from <http://www.dfa.ms.gov/media/4858/1116travelcardguidelines.pdf> on April 27, 2017.

²⁹ Mississippi Department of Finance and Administration’s Office of Purchasing, Travel, and Fleet Management (2014) Travel Card Guidelines Policy and Procedures Manual. p. 9

Recommendation 6: The executive director should also create and implement internal policies and procedures that will provide each employee directives that will limit the misuse and/or abuse of the travel card. Further, no reimbursements should be issued for charges that do not adhere to the DFA travel card guidelines.

Recommendation 7: Any cardholder that violates the internal or DFA policies and procedures should be reprimanded and travel card privileges suspended, as outlined in the DFA travel card guidelines.

CPCC does not operate within state guidelines for procurement cards.

The state of Mississippi makes available to all state agencies a procurement card that can be used to purchase commodities or services that do not exceed \$5,000. This card allows each agency, whether in person or not, to obtain items or services directly from the vendor without going through the usual purchase order driven process.

DFA's Office of Purchasing and Travel created a manual that outlines all policies and procedures related to the procurement card, as well as state purchasing laws that must be followed while using the card. This manual requires each state agency to: "have operating procedures and designated personnel to manage the program; comply with state purchasing requirements; and adopt own expenditure limits and purchase restrictions."³⁰

The CPCC has two procurement cards for the agency. One that is assigned to the executive director and the other, a control account, which is not assigned to any specific individual, with \$5,000 and \$10,000 limits, respectively. According to the DFA policy manual, the control account can be utilized by any employee of the agency; however, the agency should establish a sign in and sign out procedure when there is a need for a specific employee to use the card. From OSA's observation and information received from the representative from the contracted consultant, there is only one employee that utilizes the control account for office related purchases at CPCC.

OSA initially reviewed a random sample of ten percent (10%) of all CPCC procurement card statements for fiscal years 2014, 2015, and 2016. Determining this was not an adequate sample, OSA increased the sample size to thirty percent (30%), which yielded two statements from each fiscal year. The only guidance used by OSA to determine compliance was DFA's procurement card policy manual, as the agency does not have internal policies and procedures as required by DFA.

The review of the transactions on the agency's procurement cards revealed outstanding balances being carried over to the next month, which clearly violates DFA guidelines. Further, OSA contacted DFA, who had previously conducted a procurement audit of CPCC. DFA's audit revealed the same issues along with several instances of the CPCC making purchases that exceed \$100 without utilizing a state contract vendor. CPCC made several purchases at Office Depot, which has a cooperative contract with the state instead of a competitive contract. DFA specifies that a cooperative contract can only be utilized if the competitive contract vendor does not carry the items that the agency needs.

Recommendation 8: OSA recommends that CPCC establish internal policies and procedures as outlined in the DFA procurement card manual.

³⁰ State of Mississippi Office of Purchasing and Travel (2013) State Procurement Card Guidelines. p. 1

Recommendation 9: The program coordinator at the CPCC should closely review all purchases on the procurement card to ensure that state taxpayer dollars are not being used for items that are of a personal nature.

Recommendation 10: The executive director and the contracted accountant should review the purchasing requirements established by DFA so that state contract guidelines are followed and that the appropriate vendor is being used for the needs of the agency. Also, the executive director, along with the consultant, should ensure that statements are reconciled and payment submitted before the next statement is released, as specified in DFA policy.

CPCC does not operate within state guidelines for petty cash.

Mississippi Code Section 7-7-59 allows each agency to establish a petty cash fund. Section 29 of the Mississippi Agency Accounting Policies and Procedures (MAAPP) manual addresses the use, establishment, and reimbursement of these funds. This manual also contains a form that agencies are required to complete to request reimbursement of petty cash expenditures. The MAAPP manual recommends that each agency create internal policies and procedures related to the petty cash account.³¹ In addition to these guidelines, DFA created an assessment tool for agencies to evaluate their internal controls over petty cash.³²

In October of 2000, the executive director, at that time, of CPCC sent a request to DFA to create a petty cash account for the CPCC in the amount of \$1,000. The purpose of the account, as notated in the letter, was to purchase office supplies, pay court fees, and to pay for the process of notifying a person of legal action. The letter also named Bancorp South as the bank that the agency would use to service the petty cash account. In October of 2012, another letter was sent to DFA requesting that the account be increased to \$2,000 with procurement of personal records for clients being listed as the main use of petty cash and the reason for the need to increase the account.

OSA reviewed all of CPCC's petty cash expense forms, along with corresponding bank statements, for fiscal years 2014, 2015, and 2016. Since the MAAPP guidelines were somewhat vague, OSA relied on the DFA internal control assessment tool and the CPCC internal policies and procedures to determine compliance. Using these tools, OSA found several discrepancies related to petty cash during its review. Some of the issues noted included no notation of the person who reconciled the petty cash account; invalid and/or missing receipts; and incomplete, inaccurate, or missing expense forms. Other areas of concern that did not necessarily violate any of the established guidelines included, but are not limited to, purchasing gala tickets, paying for association dues, reimbursing travel costs for interns, and paying for guest's meals at meetings. Of grave concern was the number of checks that appear to be missing (checks never appeared on the bank statement), the fact that the executive director wrote checks to herself for reimbursement, and based on the various handwritten checks, it appears that the executive director is simply signing blank checks and giving them to employees for various reasons, such as paying for copies of medical records or picking up office supplies.

³¹ Mississippi Department of Finance and Administration. Mississippi Agency Accounting Policies and Procedures Manual. Section 29. Retrieved from <http://www.dfa.ms.gov/dfa-offices/financial-reporting/maapp-manual/> on April 27, 2017.

³² Mississippi Department of Finance and Administration. Mississippi Agency Accounting Policies and Procedures Manual. Exhibit 28. Retrieved from <http://www.dfa.ms.gov/media/1288/30-internal-control-2-exhibits.pdf> on April 27, 2017.

Recommendation 11: Because of the seriousness of the issues noted during the audit, OSA recommends that DFA via the MAAPP manual be more specific regarding either authorized and/or unauthorized uses of petty cash funds. While this may limit agencies from using the account in a way that is beneficial to the agency, more strict guidelines could limit the misuse or abuse of these funds.

Recommendation 12: CPCC should review the initial purpose of the CPCC petty cash account and either adhere strictly to that purpose or update the original information that was sent to DFA regarding how the account will be used.

Recommendation 13: It is imperative that a monthly reconciliation of the bank statements for the petty cash account be conducted by someone that is not the custodian over the account. This person should sign/initial and date each statement to show when this reconciliation occurred and who performed it.

CPCC does not follow standard practices for contracts.

One of the statutorily mandated offices that fall under the Mississippi State Personnel Board is the Personal Service Contract Review Board (PSCRB). The PSCRB is composed of a five member team that is responsible for disseminating information related to obtaining personal service contracts. According to the MSPB's website, these contracts should be "obtained in a manner that is competitive in nature, thereby resulting in quality services obtained at reasonable prices."³³ This Board is also responsible for approving any personal service contract that exceeds \$75,000.

In addition to the PSCRB, the Department of Finance and Administration's Office of Purchasing, Travel, and Fleet Management issues very specific policies and procedures related to purchasing commodities and equipment. These guidelines are very detailed and even provide information to vendors that have a desire to contract with the state or any entity under the state umbrella. The purchase of computers or other information technology related services is covered in policies issued by Department of Information Technology Services (ITS).

CPCC personal service contracts encompass a wide range of services/professions. Although it would seem that outside attorneys would receive majority of the CPCC contracts, this agency actually utilizes the skills of various types of expert witnesses, mitigation specialists, investigators, accountants, and translators. Based on independent contractor data obtained from the Mississippi Transparency website³⁴ and the CPCC accounting contractor, attorney contracts only made up approximately twenty-five percent (25%) of contracts completed since June 28, 2014. The largest portion of the contracts, fifty-one percent (51%), was actually with expert witnesses with the remaining almost spread evenly across mitigation specialists, translators, and accountants. See Exhibit 1 on page 4.

During this audit, OSA evaluated all CPCC contracts for fiscal years 2015 and 2016 that were available for review on the Mississippi Transparency website. Since the CPCC does not fall under the purview of the State Personnel Board, their contracts are not bound by the standards or procedures established by the Personal Service Contract Review Board. In addition, all of the CPCC contracts were for personal services and not for equipment, commodities, or other information technology related services; therefore, procurement guidelines set forth by the DFA and ITS are not applicable to

³³ MSPB website: <http://www.mspb.ms.gov/about-mspb.aspx>

³⁴ Mississippi Transparency website. Retrieved from

<https://boe.magic.ms.gov/BOE/OpenDocument/1501031122/OpenDocument/pendoc/openDocument.faces?logonSuccessful=true&shareId=1> on April 27, 2017.

their contracts. As a result, OSA auditors only notated weaknesses in the contracts found on the Mississippi Transparency website.

OSA found that that the CPCC has not established their own standard contractual agreement or fee scale for services. Most of the agreements utilize a contract that was established by the vendor without an addendum to protect the interests of the CPCC and the state of Mississippi. OSA also noted that the fees for each contract, whether the contracts contain similar deliverables or not, vary greatly. The agency has not established any policies or procedures related to entering into contracts, how to identify potential contractors, evaluation of contractors, or necessary clawbacks for non-performance of contractors.

Recommendation 14: The Legislature should require the CPCC contracts to adhere to the PSCRB guidelines. The current contract practices utilized by CPCC do not allow for uniformity or consistency. Until there is a change in legislation, CPCC should consider utilizing the best practices guide on the MSPB website for Professional Services Procurement to establish policies and procedures and create a standard contract template that will include evaluation language for the contractor and claw backs for non-performance.

Recommendation 15: The CPCC should create a roster of potential contractors for each of the categories of professionals the office utilizes. Doing this will allow for consistency, as well as enable the office to negotiate reasonable price points/scales for services and provide a more solid basis for budget requests during the budgeting process.

APPENDIX A: Scope and Methodology

OSA conducted this performance audit under the provision of §7-7-211 from the Mississippi Code of 1972. The purpose of this audit was to evaluate the Mississippi Office of Capital Post-Conviction Counsel (CPCC) to determine whether the agency is operating according to certain aspects of state law and/or national standards. The audit covered fiscal years 2014 through 2016. The audit objectives were as follows:

- **To determine whether CPCC operates within the parameters of state law and national standards regarding oversight and staffing of the agency.**
- **To determine whether the executive director ensures the appropriate appointment and quality performance of all staff members who represent indigent parties under sentences of death in post-conviction proceedings.**
- **To determine whether the Mississippi Office of the Capital Post-Conviction Counsel fiscally operating in compliance with state laws and are there sufficient internal controls to detect and/or eliminate opportunities for fraud, waste, and abuse.**

OSA auditors planned and performed the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. To answer the objectives, OSA reviewed statutes, professional standards, and internal controls relevant to the audit objectives and performed the following audit steps:

- Researched Mississippi statutes, Mississippi Administrative Code, and Legislative Budget Office (LBO) publications to understand CPCC's legal authority, organizational structure, reporting requirements, responsibilities, mission, and goals.
- Conducted research on best practices for the administration of the capital post-conviction function to include: organizational structure, staffing, recruitment of qualified staff, and the evaluation of staff.
- Conducted research to provide background information on capital post-conviction proceedings in Mississippi.
- Reviewed and analyzed contracts, case assignments, and compensatory time accruals.
- Reviewed statutes related to staffing, oversight, and organizational structures of other southeastern states.
- Reviewed the Mississippi Rules of Appellate Procedure.
- Reviewed staff credentials, staff self-evaluations, job descriptions, and recruitment documents.
- Verified staff attorney's status with the Mississippi Bar Association and continuing legal education credits as maintained by the Mississippi Commission on Continuing Legal Education.

- Reviewed travel vouchers, travel cards, procurement cards, petty cash, and contracts.
- Interviewed staff from the CPCC, Mississippi Office of the State Public Defender, Administrative Office of Courts, the Supreme Court, and the agency's contract accountant.

APPENDIX B: Background

Authority. During the 2000 Regular Legislative Session, House Bill 1228 created the Mississippi Office of Capital Post-Conviction Counsel (CPCC). According to the original legislation, the CPCC's purpose was "providing representation to indigent parties under sentences of death in post-conviction proceedings, and to perform such other duties as set forth by law." This purpose has not changed since the creation of the office.

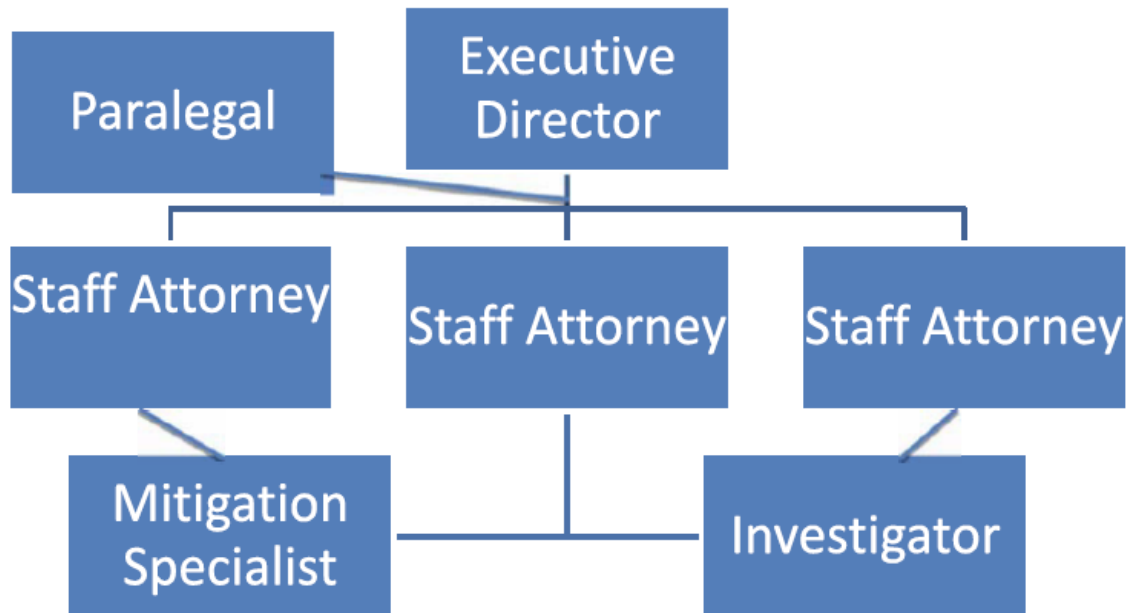
Organization. When the CPCC was established, it was set up as a state agency employing only six employees – three (3) staff attorneys, one (1) of whom would be the executive director; one (1) investigator; one (1) fiscal officer, and one (1) secretary/paralegal. Initially, the executive director was to be appointed by the Chief Justice of the Mississippi Supreme Court, with a majority of the justices approving. He/she was set to serve a four year term unless a successor was not named at that time. Over the years, this original organizational structure has changed. The total number of actual employees is now set by the agency's annual appropriations bill. The breakdown of employees is no longer a part of the law, and the executive director is allowed to staff the office as he/she sees fit. The appointment of the executive director is still for a four year term, but that director is now appointed by the Governor with guidance and approval from the Senate.

Funding. CPCC's funding is set by the legislature in their annual appropriations bill. For fiscal year 2002, the first year that CPCC actually had an appropriations bill on file, the agency received \$719,289 from the general fund with the authority to escalate funds from any source up to two million dollars. After FY2002, funding continued to rise but also came from special fund dollars. For FY2018, the legislature appropriated \$1,547,192 from the general fund and \$227,145 in special funds, with no escalation authority.

Oversight. Although the Governor has the authority to remove the executive director for not performing the duties of the agency, the law does not specifically spell out any tool or avenue that is to be used for oversight of the agency. The executive director is required to maintain and distribute copies of specific reports, dockets, and rosters, but there is no specific mention that these documents are to be used for any particular purpose. As a result, there does not appear to be any formal oversight mechanism utilized by any specific agency to evaluate the performance of CPCC or its staff.

APPENDIX C: CPCC Organizational Chart

MISSISSIPPI OFFICE OF CAPITAL POST-CONVICTION COUNSEL ORGANIZATIONAL CHART



APPENDIX D: Comparison of the Capital Post-Conviction Function

*Information not specified in statute

	Mississippi	Florida	Kentucky	North Carolina	Tennessee	Virginia
Statute	Mississippi Capital Post-Conviction Counsel Act (99-39-101)	Capital Collateral Regional Counsel (Ch. 27 Section 701)	Department for Public Advocacy (Ch. 31)	Indigent Defense Services Act (Article 39B)	Post-Conviction Defender Oversight Commission Act of 2011 (40-30-201)	Criminal Procedure (Title 19.2)
Agency/Purpose	<p>Office of Capital Post-Conviction Counsel</p> <p>Purpose: The Office of Capital Post-Conviction Counsel shall limit its activities to the representation of inmates under sentence of death in post-conviction proceedings and ancillary matters related directly to post-conviction review of their convictions and sentences and other activities explicitly authorized in statute.</p>	<p>Capital Collateral Regional Counsel: Consists of three regional offices that function independently and are separate budget entities.</p> <p>Purpose: To represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court.</p>	<p>Department of Public Advocacy: Post-trial division with post-conviction branch.</p> <p>Purpose: The Post-Conviction Branch handles both capital and non-capital post-conviction cases and cases involving claims of actual innocence with the Kentucky Innocence Project. The branch is responsible for representing indigent adults and youthful offenders throughout all 120 Kentucky counties who are collaterally attacking their criminal convictions.</p>	<p>Office of Indigent Defense Services: Office of the Capital Defender, which includes Regional Capital Defender Offices</p> <p>Purpose: The Office of the Capital Defender handles capital post-conviction level cases.</p>	<p>Office of Post-Conviction Defender</p> <p>Purpose: The exclusive function of the post-conviction defender's office shall be to provide legal representation to persons convicted of capital offenses.</p>	<p>State Public Defender Offices: Capital Defender Offices (Regional)</p> <p>Purpose: Capital Defender Offices are principally trial-level offices, representing indigent clients charged with capital murder in cases. The offices are also involved in a smaller number of direct appeals of capital convictions and provides resource and consultative services to other capital trial counsel.</p>

	Mississippi	Florida	Kentucky	North Carolina	Tennessee	Virginia
Oversight/ Administrative Support	*	Justice Administrative Commission: Provides administrative support and service to the three regional offices to the extent requested. The three regional offices shall not be subject to control, supervision, or direction by the Justice Administrative Commission in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.	Public Advocacy Commission: Assists the public advocate in drawing up procedures for the selection of his or her staff. Reviews the performance of the public advocacy system and provides general supervision of the public advocate, etc. Justice and Public Safety Cabinet: Attached to Department of Public Advocacy for administrative purposes.	Commission on Indigent Defense Services: Develops and improves programs provided by the Office of Indigent Defense Services by developing standards governing the provision of services. E.g., office operations to include qualifications, training, and size of legal and supporting staff as well as prescribing minimum experience, training, and other qualifications for appointed counsel, caseloads, performance, compensations, etc. Administrative Office of Courts: Provides general administrative support for purchasing, payroll, and similar administrative services.	Post-Conviction Defender Oversight Commission: Shall be strictly administrative in nature and shall oversee budget, staffing and caseload concerns. In order to avoid possible conflicts, relating to cases assigned to the post-conviction defender's office, no member of the commission shall advise, consult or otherwise directly assist the post-conviction defender or the post-conviction defender's staff in providing legal representation in such cases.	Virginia Indigent Defense Commission: The Commission shall be supervisory with the following powers and duties: Publicize and enforce the qualification standards for attorneys, develop initial training courses for attorneys, approve requests for appropriations, ensure public defender offices collect and maintain caseload data and fields in a case management database on an annual basis, adopt rules and procedures for the conduct of its business, etc.

	Mississippi	Florida	Kentucky	North Carolina	Tennessee	Virginia
Reporting Requirements	<p>Monthly Reports: The director shall keep a docket of all death penalty cases originating in the courts of Mississippi, which must at all reasonable times be open to the inspection of the public and must show the county, district and court in which the causes have been instituted. The director shall prepare and maintain a roster of all death penalty cases originating in the courts of Mississippi and pending in state and federal courts indicating the current status of each such case, and a history of those death penalty cases filed since 1976. Copies of such dockets and rosters shall be submitted to the Governor, Chief Justice of the Supreme Court and the Administrative Office of Courts monthly. The director shall also report monthly to the Administrative Office of Courts the</p>	<p>Quarterly Report: Each regional office must provide a quarterly report to the President of the Senate and the Speaker of the House of Representatives that details the number of hours worked by investigators and legal counsel per case and the amounts per case expended during the preceding quarter.</p>	<p>Annual Report: Filing with the Legislative Research Commission an annual report, by September 30 of each year, setting forth the total number of cases assigned to the department, the average number of cases per department attorney, all funding available to the department, the average amount of state funds expended per assigned case, and any other information requested by the Legislative Research Commission or that the public advocate finds necessary to inform the General Assembly, the judicial or executive branches, or the public of the activities conducted by the department during the previous fiscal year.</p>	<p>Annual Report: The Director of Indigent Defense Services shall prepare and submit to the Commission a proposed budget for the Office of Indigent Defense Services, an annual report containing pertinent data on the operations, costs, and needs of the Office, and such other information as the Commission may require;</p> <p>Annual Report: The Office of Indigent Defense Services shall report to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety and to the Chairs of the House of Representatives and Senate Committees on Justice and Public Safety by March 15 of each year on the following: (1) The volume and cost of cases handled in each district by assigned counsel or public defenders; NC General Statutes -</p>	<p>Annual Report: The post-conviction defender shall keep appropriate records and make annual reports concerning caseload, funding, staffing, and salaries to the post-conviction defender oversight commission; provided, however, that the post-conviction defender and the defender's staff shall not discuss specific details about any case with the members of the commission.</p> <p>Annual Budget: The Post-Conviction Defender Oversight Commission shall prepare an annual budget for the office of the post-conviction defender, administer the funds made available to the office, and oversee the expenditure of the funds.</p>	<p>Annual Report: To report annually on or before October 1 to the Virginia State Crime Commission, the House and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the state of indigent criminal defense in the Commonwealth, including Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel appointed pursuant to § 19.2-159 or subdivision C 2 of § 16.1-266.</p> <p>Periodic Report: The Virginia Indigent Defense Commission shall periodically review and report to the Virginia State Crime Commission, the House and the Senate Committees for Courts of Justice, the House Committee on Appropriations, and</p>

	Mississippi	Florida	Kentucky	North Carolina	Tennessee	Virginia
Reporting Requirements (Continued from previous page)	activities, receipts and expenditures of the office.			Chapter 7A Article 39B 10 (2) Actions taken by the Office to improve the cost-effectiveness and quality of indigent defense services, including the capital case program; (3) Plans for changes in rules, standards, or regulations in the upcoming year; and (4) Any recommended changes in law or funding procedures that would assist the Office in improving the management of funds expended for indigent defense services, including any recommendations concerning the feasibility and desirability of establishing regional public defender offices.		the Senate Committee on Finance on the caseload handled by each public defender office. Reports: Public Defenders shall submit such reports as required by the Commission.

	Mississippi	Florida	Kentucky	North Carolina	Tennessee	Virginia
Personnel (Director Appointment/Term/Removal)	<p>Appointment: The director shall be appointed by the Governor with the advice and consent of the Senate</p> <p>Term/Removal: Four years or until a successor takes office. The director may be removed from office by the Governor upon finding that the director is not qualified under law to serve as post-conviction counsel for persons under sentences of death, has failed to perform the duties of the office or has acted beyond the scope of the authority granted by law for the office.</p>	<p>Appointment: Each capital collateral regional counsel is appointed by the Governor, and is subject to confirmation by the Senate. The Supreme Court Judicial Nominating Commission recommends to the Governor three qualified candidates for each appointment. The Governor may reject the nominations and request submission of three new nominees by the Supreme Court Judicial Nominating Commission.</p> <p>Term/Removal: Each capital collateral regional counsel shall be appointed to a term of 3 years.</p>	<p>Appointment: The Public Advocacy Commission shall receive applications, interview, and recommend to the Governor three (3) attorneys as nominees for appointment as the public advocate.</p> <p>Term/Removal: Shall serve a term of four (4) years, which is renewable, unless removed by the Governor.</p>	<p>Appointment: The Commission on Indigent Defense Services appoints the Director of the Office of Indigent Defense Services, who is chosen on the basis of training, experience, and other qualifications. The Commission shall consult with the Chief Justice and Director of Administrative Office of the Courts in selecting a Director, but has final authority in making the appointment.</p> <p>Term/Removal: The Director of Indigent Defense Services shall be appointed by the Commission for a term of four years. The Director may be removed during this term in the discretion of the Commission by a vote of two-thirds of all of the Commission members.</p>	<p>Appointment: The Post-Conviction Defender Oversight Commission shall appoint a qualified attorney to the office of post-conviction defender. The post-conviction defender shall be an attorney in good standing with the Tennessee supreme court and shall possess a demonstrated experience in the litigation of capital crimes.</p> <p>Term/Removal: The post-conviction defender shall serve a term of four (4) years.</p>	<p>Appointment: The Virginia Indigent Defense Commission has authority to hire and employ an executive director.</p> <p>Term/Removal: The executive director serves, and may be removed at the pleasure of the Virginia Indigent Defense Commission.</p>

	Mississippi	Florida	Kentucky	North Carolina	Tennessee	Virginia
Personnel (Minimum Qualifications)	<p>Director: Shall be an attorney who shall meet all qualifications necessary to serve as post-conviction counsel for persons under a sentence of death.</p> <p>Director and all other attorneys: Shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office.</p>	<p>Regional Counsel: Must be, and must have been for the preceding 5 years, a member in good standing of The Florida Bar or a similar organization in another state.</p> <p>Counsel: A full-time assistant capital collateral counsel must not be disqualified pursuant to s. 27.7045; must be a member in good standing of The Florida Bar, with not less than 3 years' experience in the practice of criminal law; and, prior to employment, must have participated in at least five felony jury trials, five felony appeals, or five capital post-conviction evidentiary hearings or any combination of at least five of such proceedings.</p>	<p>Public Advocate: Shall be an attorney licensed to practice law in Kentucky with at least five (5) years of experience in the practice of law.</p> <p>General Counsel and Assistant Public Advocates: Shall be attorneys</p>	<p>Director: The Director shall be an attorney licensed and eligible to practice in the courts of this state at the time of appointment and at all times during service as the Director.</p>	<p>Post-Conviction Defender: Shall be an attorney in good standing with the Tennessee supreme court and shall possess a demonstrated experience in the litigation of capital crimes.</p>	<p>Attorneys: An attorney seeking to represent an indigent accused in a criminal case, in addition to being a member in good standing of the Virginia State Bar, shall meet the specific criteria required for each type or level of case. In any case in which an indigent defendant is charged with a capital offense, the judge of the circuit court, upon request for the appt. of counsel, shall appt. at least 2 attorneys from the list or lists established by the Supreme Court and the Indigent Defense Commission or as provided in subsection C of § 19.2-163.8 to represent the defendant at trial and, if the defendant is sentenced to death, on appeal. One of the attorneys appointed shall be from a capital defense unit maintained by the Indigent Defense Commission.</p>

	Mississippi	Florida	Kentucky	North Carolina	Tennessee	Virginia
Personnel (Staffing Authority)	Staffed by any necessary personnel as determined and hired by the director.	Regional counsel may appoint, employ, and establish, in such numbers as he or she determines, full-time or part-time assistant counsel, investigators, and other clerical and support personnel who shall be paid from funds appropriated for that purpose.	The Department of Public Advocacy shall consist of the public advocate who may appoint a deputy advocate, general counsel, and such assistant public advocates, secretarial, and other personnel as deemed necessary.	*	The post-conviction defender is authorized to appoint, employ, and establish, in the numbers as the post-conviction defender determines, full-time assistant post-conviction defenders, investigators, and other clerical and support personnel who shall be paid from funds appropriated for that purpose.	The public defender or capital defender may employ such staff, including secretarial and investigative personnel, as may be necessary to carry out the duties imposed upon the public defender office. The executive director may appoint, after prior notice to the Commission, a deputy director, and for each of the above offices a public defender or capital defender, as the case may be. The public defender or capital defender may employ such assistants as authorized by the Commission.

	Mississippi	Florida	Kentucky	North Carolina	Tennessee	Virginia
Personnel (Outsourcing)	<p>Contracts: If at any time during the representation of two (2) or more defendants, the director determines that the interest of those persons are so adverse or hostile that they cannot all be represented by the director or his staff without conflict of interest, or if the director shall determine that the volume or number of representations shall so require, the director, in his sole discretion, not withstanding any statute or regulation to the contrary, shall be authorized to employ qualified private counsel.</p>	<p>Roster: The Justice Administration Commission is responsible for compiling and maintaining a statewide registry of attorneys in private practice who have certified that they meet the minimum requirements specified in law and are available for appointment.</p> <p>Contracts: Private counsel who are members in good standing of The Florida Bar or with public defenders. Must not be disqualified pursuant to s. 27.7045; must have 3 years' experience in the practice of criminal law; and, participated in at least 2 capital trials or capital sentencing proceedings, 5 felony appeals, or 5 capital post-conviction evidentiary hearings, or any combination of at least 5 of such proceedings.</p>	*	<p>Contracts: The Office may enter into contracts</p>	*	<p>Roster: The Supreme Court and the Indigent Defense Commission shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to represent defendants charged with capital murder or sentenced to death. In establishing such a list, the Court and the Commission shall consider all relevant factors, including but not limited to, the attorney's background, experience, and training and the Court's and the Commission's assessment of whether the attorney is competent to provide quality legal representation.</p>

APPENDIX E: Original Rule 22(d) Language

Rule 22. Application for Post-Conviction Collateral Relief in..., MS R RAP Rule 22

require (1) the filing of the motion for post-conviction relief within thirty (30) days following the entry of the order, and, if an evidentiary hearing is to be granted, such hearing to be conducted not more than one hundred eighty (180) days following the filing of the motion for post-conviction relief. The scheduling order shall, in any event, require disposition of all proceedings in the convicting court within two hundred seventy (270) days following the filing of the motion for post-conviction relief. The preparation of the transcript and record of proceedings shall take precedence over all other duties of the court reporter assigned to the post-conviction proceedings in the convicting court, and in any event, such record shall be transcribed within thirty (30) days following the conclusion of such proceedings unless additional time shall be allowed by the Supreme Court.

(7) To the extent that the procedures set out in this rule may conflict with any other rule of procedure or practice, the procedures set out herein shall control in post-conviction proceedings on behalf of petitioners under a sentence of death.

(8) Appeals from the judgments entered under this rule shall proceed as in other appeals from post-conviction decisions of the convicting courts and in accordance with rules established by the Supreme Court.

(9) If after an application for leave to file a motion for post-conviction relief is filed, the petitioner is denied post-conviction relief in this Court, or is denied such relief in the convicting court after grant of an application for leave to file for post-conviction relief in the convicting court and the Supreme Court affirms such denial by the trial court, an attorney, whether appointed under this section or privately retained, shall not later than fifteen (15) days after such denial becomes final in the Supreme Court, move to be appointed as counsel in federal habeas review under 21 U.S.C. Section 848(q) or equivalent provision or, if necessary, move for the appointment of other counsel under 21 U.S.C. Section 848(q) or equivalent provision.

(d) Standards and Qualifications for Attorneys Appointed or Retained to Represent Those Under Sentence of Death in Post-conviction Proceedings. Counsel representing those under a sentence of death seeking post-conviction relief shall,

(1) Be admitted to practice law in Mississippi, being a member in good standing of the Bar for at least five years immediately preceding the appointment, or admitted pro hac vice pursuant to order entered under M.R.A.P. 46 and being a member in good standing of that attorney's home jurisdiction for a like period immediately preceding the appointment,

(2) Be admitted to practice in the federal courts of Mississippi and before the Fifth Circuit, or, in the case of attorneys appearing pro hac vice, admitted to the federal district courts and the circuit court of appeals having jurisdiction in their home areas,

(3) Have practiced in the area of state criminal appeals or post-conviction proceedings for three years immediately preceding appointment,

(4) Have not previously represented the capital petitioner in the case either in the trial court or in the direct appeal, unless the petitioner and counsel expressly request continued representation and waive all potential issues that are foreclosed by continued representation, and

(5) Have within five years immediately preceding the appointment been counsel in an appeal or post-conviction proceeding in a case in which a death sentence was imposed, and have prior experience as counsel in the appeal of at least three felony convictions and at least one post-conviction proceeding; or, in the alternative, have within such period been counsel in the appeal of at least six felony convictions, at least two of which were appeals from murder convictions and counsel in at least two post-conviction proceedings.

Rule 22. Application for Post-Conviction Collateral Relief in..., MS R RAP Rule 22

Provided, however, under exceptional circumstances, and with the consent of the Supreme Court, an attorney may be appointed who does not meet the stated qualifications upon a showing that the attorney's experience, stature and record enable the Court to conclude that the attorney's ability significantly exceeds the standards set forth in the rule.

(e) Education and Training of Attorneys Appointed or Retained to Represent Those Under Sentence of Death in Post-conviction Proceedings. Effective July 31, 2000, an attorney serving as post-conviction counsel in a case wherein the petitioner is under a sentence of death shall have within one year prior to his appointment or employment successfully completed twelve hours training or educational programs in the area of capital defense through a program accredited by the Mississippi Commission on Continuing Legal Education or by the American Bar Association.

Credits

[Adopted August 21, 1996; amended June 24, 1999 by order entered that date; amended effective July 27, 2000; amended effective February 10, 2005 to specify that post-conviction issues are to be raised on direct appeal only when they are apparent on the record; amended effective May 31, 2007, to provide for sanctions.]

Editors' Notes

ADVISORY COMMITTEE HISTORICAL NOTE

Effective July 27, 2000, new Rules 22(b) and (c) were adopted with a related reference in 22(a) and a third paragraph added to the Comment. 761-763 So.2d XVII (West Miss.Cases 2000).

Effective June 24, 1999, Rule 22(a) was revised regarding deficient applications and Rules 22(c) and (d) were adopted. 735 So.2d XXIII (West Miss.Cases 1999).

Effective January 1, 1999, Rule 22(a) was amended to provide thirty days after notice from the clerk to remedy failure to comply substantially with statutory requirements. 717-722 So.2d XXVII (West Miss.Cases 1998).

Effective January 1, 1995, Miss.R.App.P.22 replaced Miss.Sup.Ct.R.22. 644-647 So.2d LVII (West Miss.Cases 1994).

COMMENT

Rule 22 incorporates the comprehensive procedure reflected in the Mississippi Uniform Post-Conviction Collateral Relief Act, codified at Section 99-39-1, et seq. of the Mississippi Code. Passed in 1984, the Act requires that when a prisoner's conviction and sentence have been appealed to the Supreme Court, and the appeal is either affirmed or dismissed, the prisoner is to seek leave from that Court before filing a motion for post-conviction collateral relief in the trial court, Section 99-39-7. The motion for leave is governed by Section 99-39-27, and the provisions of these rules that are consistent with that statute. See, e.g., Rules 25, filing and service; 26, computation and extension of time; 27, motions; 28(h), length of briefs; 31(c), number of briefs.

Rule 22(b) allows the appellant to raise post-conviction issues on direct appeal where the issues are fully apparent from the record of the trial, and failure to raise such issues constitutes a waiver. Under this provision, issues such as claims of ineffective assistance of counsel for failure to object to evidence offered by the state or to argument by the state must be raised on direct appeal. Other post-conviction issues which cannot be raised at the time of appeal because they involve actions or inaction outside the record are not waived since they cannot practically be raised without further development or investigation.

If leave to proceed in the trial court is granted, and proceedings take place there pursuant to §§ 99-39-9 to 99-39-23, an appeal from the trial court's decision is governed by these rules except as otherwise stated in § 99-39-25, which makes specific

APPENDIX F: Blank Travel Voucher

Front of the Travel Voucher

Form 13.20.10
Revised 11/2013

TRAVEL VOUCHER

State of Mississippi: _____
(Agency or Institution)
Name: _____ PIN/WIN #: _____
Address: _____ PID#: _____

Check One:	
Employee	<input type="checkbox"/>
Contract Worker	<input type="checkbox"/>
Board Member	<input type="checkbox"/>

I request reimbursement for subsistence and other authorized expenses paid by me incident to official travel for the State from _____ to _____. The itemized statement follows.
(date) (date)

Check Box(es):	In-State	Out-of-State	Out-of-Country	PTE Request
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Prior to Trip Expenses (PTE) Request:	
Lodging	
Public Carrier	

Payment Information (Traveler complete, if known)	
Trip #	
Travel Voucher #	
SAAS Ag #	
SPAHRS Ag #	
Fund #	
Activity / Location	
Org / Sub Org	
Rpt Category	
Project / Sub Proj	

Per Diem in Lieu of Subsistence	
Taxable Meals	
Non-Taxable Meals	
Lodging	
Travel in Private Vehicle	
Travel in Rented Vehicle	
Travel in Public Carrier	
Other:	
Sub Total	
Less: Travel Advance	
Less: PTE Lodging	
Less: PTE Public Carrier	
Net Payment (Overpayment)	

Subject to any difference determined by verification, I certify that the above amount claimed by me for travel expenses for the period indicated is true and accurate in all respects, and that payment for any part has not been received. In the event of overpayment, I agree that any future salary/travel disbursements may be debited to correct the overpayment.

Traveler: _____ Title: _____ Date: _____
Approved by: _____ Title: _____ Date: _____
Verified by: _____ Title: _____ Date: _____

PENALTY FOR FRAUDULENT CLAIM - fine of not more than \$250; civilly liable for full amount received illegally; removal from office or position held (Section 25-1-81 and 25-1-91, Miss. Code Ann.-1972)

Back of the Travel Voucher

Form 13.20.10

Itemized Statement of Travel Expense

SPAHS Ag #: _____

Name: _____

PID#: _____

[illegible]

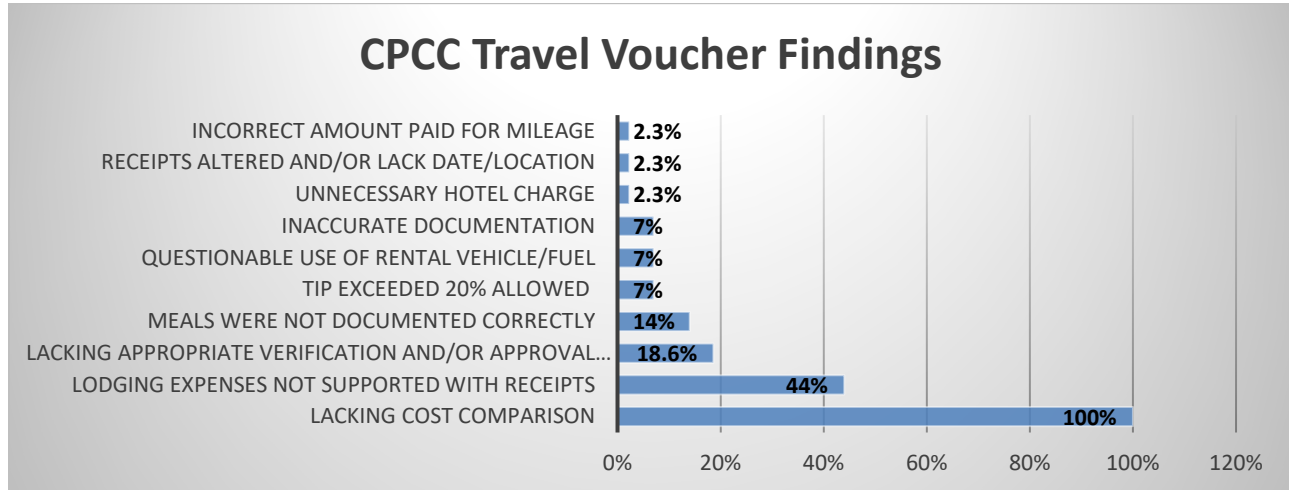
APPENDIX G: Summary of Travel Voucher Findings

FY 2014 Sample Size 10% (170 vouchers on file, 17 vouchers reviewed)

FY 2015 Sample Size 10% (141 vouchers on file, 14 vouchers reviewed)

FY 2016 Sample Size 10% (125 vouchers on file, 12 vouchers reviewed)

Total vouchers reviewed: 43

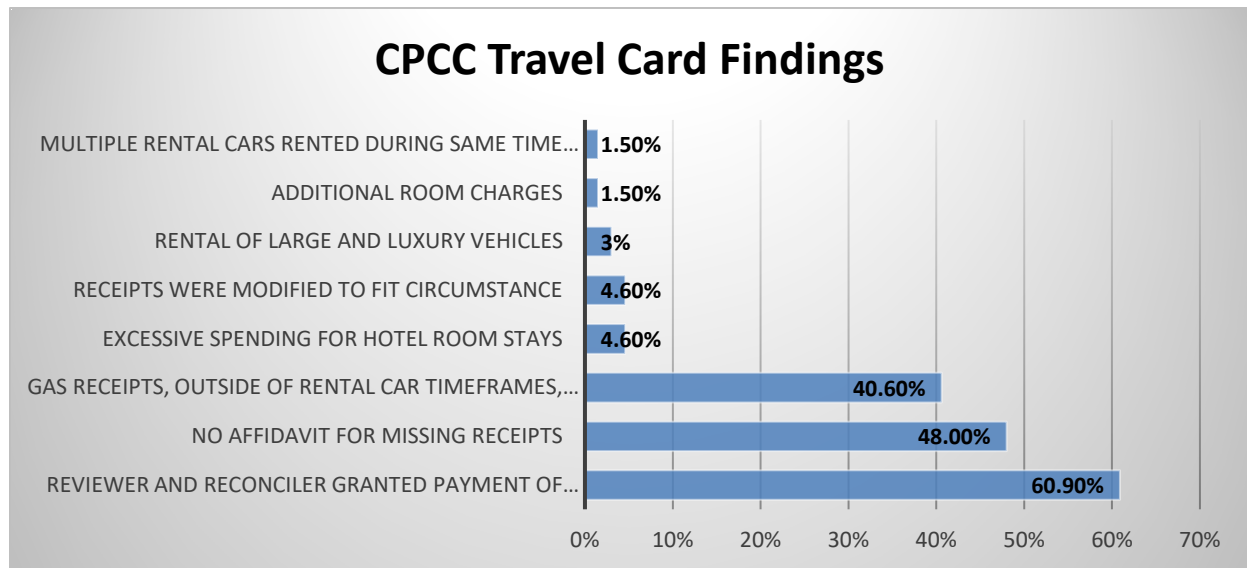


Finding	Total found
<i>Lacking Cost Comparison</i>	43 (100% of total reviewed)
<i>Lodging Expenses not Supported with Receipts</i>	19 (44% of total reviewed) <ul style="list-style-type: none"> • Direct billed - No receipt: 17 • Travel card - No receipt: 2
<i>Lacking Appropriate Verification and/or Approval Signatures</i>	8 (18.6% of total reviewed)
<i>Meals Were Not Documented Correctly</i>	6 (14% of total reviewed)
<i>Tip Exceeded 20% Allowed</i>	3 (7% of total reviewed)
<i>Questionable Use of Rental Vehicle/Fuel</i>	3 (7% of total reviewed)
<i>Inaccurate Documentation</i>	3 (7% of total reviewed)
<i>Unnecessary Hotel Charge</i>	1 (2.3% of total vouchers reviewed)
<i>Receipts Altered and/or Lack Date/Location</i>	1 (2.3% of total vouchers reviewed)
<i>Incorrect Amount Paid for Mileage</i>	1 (2.3% of total vouchers reviewed)

APPENDIX H: Summary of Travel Card Findings

FY 2014 Sample Size 30% (29 vouchers on file, 9 vouchers reviewed)
 FY 2015 Sample Size 30% (99 vouchers on file, 30 vouchers reviewed)
 FY 2016 Sample Size 30% (84 vouchers on file, 25 vouchers reviewed)

Total vouchers reviewed: 64



Finding	Total found
Reviewer and reconciler granted payment of undocumented charges	39 (60.9% of total reviewed)
No affidavit for missing receipts	31 (48% of total reviewed)
Claims for gas receipts, outside of rental car timeframes	26 (40.6% of total reviewed)
Excessive spending for hotel room stays	3 (4.6% of total reviewed)
Receipts were modified to fit circumstance	3 (4.6% of total reviewed)
Rental of large and luxury vehicles, without reason	2 (3% of total reviewed)
Additional room charges	1 (1.5% of total reviewed)
Multiple rental cars rented during same time period	1 (1.5% of total reviewed)