

GEORGIA DEATH PENALTY STANDARDS

TABLE OF CONTENTS

STANDARD 1.1—OBJECTIVE AND SCOPE OF STANDARDS ..... 2

STANDARD 2.1—PROVIDING HIGH QUALITY LEGAL REPRESENTATION IN DEATH PENALTY CASES ..... 2

STANDARD 3.1—APPLICABILITY OF PERFORMANCE STANDARDS ..... 2

STANDARD 4.1—OBLIGATIONS OF COUNSEL RESPECTING WORKLOAD ..... 2

STANDARD 5.1—THE DEFENSE TEAM ..... 3

STANDARD 6.1—RELATIONSHIP WITH THE CLIENT ..... 4

STANDARD 7.1—ADDITIONAL OBLIGATIONS OF COUNSEL REPRESENTING A FOREIGN NATIONAL ..... 6

STANDARD 8.1—INVESTIGATION ..... 6

STANDARD 9.1—THE DUTY TO ASSERT LEGAL CLAIMS ..... 7

STANDARD 10.1—THE DUTY TO SEEK AN AGREED-UPON DISPOSITION ..... 8

STANDARD 10.2—ENTRY OF A PLEA OF GUILTY ..... 12

STANDARD 11.1—TRIAL PREPARATION OVERALL ..... 13

STANDARD 11.2—VOIR DIRE AND JURY SELECTION ..... 13

STANDARD 12.1—THE DEFENSE CASE CONCERNING PENALTY ..... 14

STANDARD 13.1—THE DUTY TO FACILITATE THE WORK OF SUCCESSOR COUNSEL ..... 17

STANDARD 14.1—DUTIES OF TRIAL COUNSEL AFTER CONVICTION ..... 18

GEORGIA DEATH PENALTY STANDARDS

**STANDARD 1.1—OBJECTIVE AND SCOPE OF STANDARDS**

- A.       **The objective of the Georgia Death Penalty Standards is to set forth a standard of practice for the defense of capital cases in Georgia in order to ensure high quality legal representation for all persons facing the possible imposition or execution of a death sentence.**
  
- B.       **These Standards apply from the moment the client is taken into custody and extend to all stages of every case in which the State may be entitled to seek the death penalty, including initial and ongoing investigation, pretrial proceedings, trial, and appellate review.**

**STANDARD 2.1—PROVIDING HIGH QUALITY LEGAL REPRESENTATION IN DEATH PENALTY CASES**

**Counsel defending death penalty cases must be able to do so free from political influence and under conditions that enable them to provide zealous advocacy in accordance with professional standards.**

**STANDARD 3.1—APPLICABILITY OF PERFORMANCE STANDARDS**

**Counsel should provide high quality legal representation in accordance with these Standards for so long as the State is legally entitled to seek the death penalty.**

**STANDARD 4.1—OBLIGATIONS OF COUNSEL RESPECTING WORKLOAD**

**Counsel representing clients in death penalty cases should limit their caseloads to the level needed to provide each client with high quality legal representation in accordance with these Standards.**

## GEORGIA DEATH PENALTY STANDARDS

**STANDARD 5.1—THE DEFENSE TEAM**

- A. When it is responsible for designating counsel to defend a capital case, the Georgia Capital Defender should designate a lead counsel and one or more associate counsel. The Georgia Capital Defender or other appointing authority should ordinarily solicit the views of lead counsel before designating associate counsel.**
- B. Lead counsel bears overall responsibility for the performance of the defense team, and should allocate, direct, and supervise its work in accordance with these Standards and professional standards.**
- 1. Subject to the foregoing, lead counsel may delegate to other members of the defense team duties imposed by these Standards, unless:**
    - a. The Standard specifically imposes the duty on “lead counsel,” or**
    - b. The Standard specifically imposes the duty on “all counsel” or “all members of the defense team.”**
- C. As soon as possible after designation, lead counsel should assemble a defense team by:**
- 1. Consulting with the Georgia Capital Defender regarding the number and identity of the co-counsel;**
  - 2. Subject to standards of the Georgia Capital Defender that are in accord with these Standards and in consultation with co-counsel to the extent practicable, selecting and making any appropriate contractual agreements with non-attorney team members in such a way that the team includes:**

## GEORGIA DEATH PENALTY STANDARDS

- a. at least one mitigation specialist and one fact investigator;
  - b. at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments; and
  - c. any other members needed to provide high quality legal representation.
- D. Counsel at all stages should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should receive the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings. If such resources are denied, counsel should make an adequate record to preserve the issue for further review.
1. Counsel should have the right to have such services provided by persons independent of the government.
  2. Counsel should have the right to protect the confidentiality of communications with the persons providing such services to the same extent as would counsel paying such persons from private funds.

**STANDARD 6.1—RELATIONSHIP WITH THE CLIENT**

- A. Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust with the client, and should maintain close contact with the client.

## GEORGIA DEATH PENALTY STANDARDS

- B.**
- 1. Barring exceptional circumstances, an interview of the client should be conducted within 24 hours of initial counsel's entry into the case.**
  - 2. Promptly upon entry into the case, initial counsel should communicate in an appropriate manner with both the client and the government regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards.**
  - 3. Counsel at all stages of the case should re-advise the client and the government regarding these matters as appropriate.**
- C.**
- Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:**
- 1. the progress of and prospects for the factual investigation, and what assistance the client might provide to it;**
  - 2. current or potential legal issues;**
  - 3. the development of a defense theory;**
  - 4. presentation of the defense case;**
  - 5. potential agreed-upon dispositions of the case;**
  - 6. litigation deadlines and the projected schedule of case-related events; and**
  - 7. relevant aspects of the client's relationship with correctional, parole or other governmental agents (e.g., prison medical providers or state psychiatrists).**

GEORGIA DEATH PENALTY STANDARDS

**STANDARD 7.1—ADDITIONAL OBLIGATIONS OF COUNSEL  
REPRESENTING A FOREIGN NATIONAL**

- A. **Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals.**
  
- B. **Unless predecessor counsel has already done so, counsel representing a foreign national should:**
  - 1. **immediately advise the client of his or her right to communicate with the relevant consular office; and**
  
  - 2. **obtain the consent of the client to contact the consular office. After obtaining consent, counsel should immediately contact the client’s consular office and inform it of the client’s detention or arrest.**
    - a. **Counsel who is unable to obtain consent should exercise his or her best professional judgment under the circumstances.**

**STANDARD 8.1—INVESTIGATION**

- A. **Counsel have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty.**
  - 1. **The investigation regarding guilt should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.**

## GEORGIA DEATH PENALTY STANDARDS

2. **The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented.**

**STANDARD 9.1—THE DUTY TO ASSERT LEGAL CLAIMS**

- A. **Counsel at every stage of the case, exercising professional judgment in accordance with these Standards, should:**
  1. **consider all legal claims potentially available; and**
  2. **thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted; and**
  3. **evaluate each potential claim in light of:**
    - a. **the unique characteristics of death penalty law and practice; and**
    - b. **the near certainty that all available avenues of post-conviction relief will be pursued in the event of conviction and imposition of a death sentence; and**
    - c. **the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited; and**
    - d. **any other professionally appropriate costs and benefits to the assertion of the claim.**
- B. **Counsel who decide to assert a particular legal claim should:**
  1. **present the claim as forcefully as possible,**

## GEORGIA DEATH PENALTY STANDARDS

**tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law; and**

- 2. ensure that a full record is made of all legal proceedings in connection with the claim.**
- C. Counsel at all stages of the case should keep under consideration the possible advantages to the client of:**
- 1. asserting legal claims whose basis has only recently become known or available to counsel; and**
  - 2. supplementing claims previously made with additional factual or legal information.**

**STANDARD 10.1—THE DUTY TO SEEK AN AGREED-UPON DISPOSITION**

- A. Counsel at every stage of the case have an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these Standards to achieve an agreed-upon disposition.**
- B. Counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition. In so doing, counsel should fully explain the rights that would be waived, the possible collateral consequences, and the legal, factual, and contextual considerations that bear upon the decision. Specifically, counsel should know and fully explain to the client:**
- 1. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included or alternative offenses;**

## GEORGIA DEATH PENALTY STANDARDS

- 2. any collateral consequences of potential penalties less than death, such as forfeiture of assets, deportation, civil liabilities, and the use of the disposition adversely to the client in penalty phase proceedings of other prosecutions of him as well as any direct consequences of potential penalties less than death, such as the possibility and likelihood of parole, place of confinement and good-time credits;**
- 3. the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements;**
- 4. the governing legal regime, including but not limited to whatever choices the client may have as to the fact finder and/or sentencer;**
- 5. the types of pleas that may be agreed to, such as a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere or other plea which does not require the client to personally acknowledge guilt, along with the advantages and disadvantages of each;**
- 6. whether any agreement negotiated can be made binding on the court, on penal/parole authorities, and any others who may be involved;**
- 7. the practices, policies and concerns of the particular jurisdiction, the judge and prosecuting authority, the family of the victim and any other persons or entities which may affect the content and likely results of plea negotiations;**
- 8. concessions that the client might offer, such as:**
  - a. an agreement to waive trial and to plead guilty to particular charges;**

## GEORGIA DEATH PENALTY STANDARDS

- b. an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;**
  - c. an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case;**
  - d. an agreement to forego in whole or part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications;**
  - e. an agreement to provide the prosecution with assistance in investigating or prosecuting the present case or other alleged criminal activity;**
  - f. an agreement to engage in or refrain from any particular conduct, as appropriate to the case;**
  - g. an agreement with the victim's family, which may include matters such as: a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution;**
  - h. agreements such as those described in Subsections 8(a)-(g) respecting actual or potential charges in another jurisdiction;**
- 9. benefits the client might obtain from a negotiated settlement, including:**
- a. a guarantee that the death penalty will not be imposed;**
  - b. an agreement that the defendant will receive a**

## GEORGIA DEATH PENALTY STANDARDS

**specified sentence;**

- c. an agreement that the prosecutor will not advocate a certain sentence, will not present certain information to the court, or will engage in or refrain from engaging in other actions with regard to sentencing;**
  - d. an agreement that one or more of multiple charges will be reduced or dismissed;**
  - e. an agreement that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;**
  - f. an agreement that the client may enter a conditional plea to preserve the right to further contest certain legal issues;**
  - g. an agreement that the court or prosecutor will make specific recommendations to correctional or parole authorities regarding the terms of the client's confinement;**
  - h. agreements such as those described in Subsections 9(a)-(g) respecting actual or potential charges in another jurisdiction.**
- C. Counsel should keep the client fully informed of any negotiations for a disposition, convey to the client any offers made by the prosecution, and discuss with the client possible negotiation strategies.**
- D. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement along with the advantages, disadvantages and potential consequences of the agreement.**
- E. If a negotiated disposition would be in the best**

## GEORGIA DEATH PENALTY STANDARDS

**interest of the client, initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Similarly, a client's initial opposition should not prevent counsel from engaging in an ongoing effort to persuade the client to accept an offer of resolution that is in the client's best interest.**

- F. Counsel should not accept any agreed-upon disposition without the client's express authorization.**
- G. The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting litigation.**

**STANDARD 10.2—ENTRY OF A PLEA OF GUILTY**

- A. The informed decision whether to enter a plea of guilty lies with the client.**
- B. In the event the client determines to enter a plea of guilty:
  - 1. Prior to the entry of the plea, counsel should:
    - a. make certain that the client understands the rights to be waived by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;**
    - b. ensure that the client understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other consequences to which he or she will be exposed by entering the plea;**
    - c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including******

## GEORGIA DEATH PENALTY STANDARDS

**answering questions in court and providing a statement concerning the offense.**

- 2. During entry of the plea, counsel should make sure that the full content and conditions of any agreements with the government are placed on the record.**

**STANDARD 11.1—TRIAL PREPARATION OVERALL**

**As the investigations mandated by Standard 8.1 produce information, trial counsel should formulate a defense theory. Counsel should seek a theory that will be effective in connection with both guilt and penalty, and should seek to minimize any inconsistencies.**

**STANDARD 11.2—VOIR DIRE AND JURY SELECTION**

- A. Counsel should consider, along with potential legal challenges to the procedures for selecting the jury that would be available in any criminal case (particularly those relating to bias on the basis of race or gender), whether any procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Such challenges may include challenges to the selection of the grand jury and grand jury forepersons as well as to the selection of the traverse or petit jury venire.**
- B. Counsel should be familiar with the precedents relating to questioning and challenging of potential jurors, including the procedures surrounding “death qualification” concerning any potential juror’s beliefs about the death penalty. Counsel should be familiar with techniques: (1) for exposing those prospective jurors who would automatically impose the death penalty following a murder conviction or finding that the defendant is death-eligible,**

## GEORGIA DEATH PENALTY STANDARDS

regardless of the individual circumstances of the case; (2) for uncovering those prospective jurors who are unable to give meaningful consideration to mitigating evidence; and (3) for rehabilitating potential jurors whose initial indications of opposition to the death penalty make them possibly excludable.

- C. Counsel should consider seeking expert assistance in the jury selection process.

**STANDARD 12.1—THE DEFENSE CASE CONCERNING PENALTY**

- A. As set out in Standard 8.1(A), counsel at every stage of the case have a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation or rebuts the prosecution's case in aggravation.
- B. Trial counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between the strategy for the sentencing phase and for the guilt/innocence phase.
- C. Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures and advise the client of steps being taken in preparation for sentencing.
- D. Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning penalty that they intend to present to the sentencing or reviewing body or individual, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.
- E. Counsel should consider, and discuss with the client,

## GEORGIA DEATH PENALTY STANDARDS

**the possible consequences of having the client testify or make a statement to the sentencing body or individual.**

- F. In deciding which witnesses and evidence to prepare concerning penalty, the areas counsel should consider include the following:**
- 1. Witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, or would otherwise support a sentence less than death;**
  - 2. Expert and lay witnesses along with supporting documentation (e.g., school records, military records) to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation, or adaptation to prison; to explain possible treatment programs; or otherwise support a sentence less than death; and/or to rebut or explain evidence presented by the prosecutor;**
  - 3. Witnesses who can testify about the applicable alternative to a death sentence and/or the conditions under which the alternative sentence would be served;**
  - 4. Witnesses who can testify about the adverse impact of the client's execution on the client's family and loved ones.**

## GEORGIA DEATH PENALTY STANDARDS

- 5. Demonstrative evidence, such as photos, videos, and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts, and letters of praise or reference.**
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- G. In determining what presentation to make concerning penalty, counsel should consider whether any portion of the defense case will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions in limine) to ensure that the defense case concerning penalty is constricted as little as possible by this consideration, and should make a full record in order to support any subsequent challenges.**
  - H. Trial counsel should determine at the earliest possible time what aggravating factors the prosecution will rely upon in seeking the death penalty and what evidence will be offered in support thereof. Counsel at all stages of the case should object to any non-compliance with discovery rules, and if such rules are inadequate, counsel at all stages of the case should challenge the adequacy of the rules.**
  - I. Counsel should carefully consider whether all or part of the aggravating evidence may appropriately be challenged as improper, inaccurate, misleading or not legally admissible.**
  - J. If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:
    - 1. carefully consider
      - a. what legal challenges may appropriately be made to the interview or the conditions******



## GEORGIA DEATH PENALTY STANDARDS

- C. **sharing potential further areas of legal and factual research with successor counsel; and**
- D. **cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.**

**STANDARD 14.1—DUTIES OF TRIAL COUNSEL AFTER  
CONVICTION**

- A. **Trial counsel should be familiar with all state and federal post-conviction options available to the client. Trial counsel should discuss with the client the post-conviction procedures that will or may follow imposition of the death sentence.**
- B. **Trial counsel should take whatever action(s), such as filing a notice of appeal, and/or motion for a new trial, will maximize the client’s ability to obtain post-conviction relief.**
- C. **Trial counsel should not cease acting on the client’s behalf until successor counsel has entered the case or trial counsel’s representation has been formally terminated.**
- D. **Trial counsel should take all appropriate action to ensure that the client obtains successor counsel as soon as possible.**