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SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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October 21, 2013

Honorable John C. Few  
Chief Judge, South Carolina Court of Appeals  
Post Office Box 11629  
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Re: In the Matter of the Care and Treatment of Williams Deans,  
Appellate Case No. 2013-000879

Dear Judge Few:

Please accept this letter in lieu of a formal return to your order dated October 10, 2013. I am also most respectfully requesting an opportunity to meet with you personally before you make a final decision on this matter.

If the Appellate Division is ordered to handle all Sexually Violent Predator Appeals it will cause havoc to a caseload the Spangenburg Group Report in 2008 at page 15 labeled "crushing," and the number of briefs filed each year by this office "staggering." This situation has not changed. The Division has requested two new Appellate Defenders in this year's budget, and we need them badly. There is certainly no guarantee they will be funded.

A conservative estimate is there are one hundred and sixty-five people in the SVP program. If counsel from this office is provided for each annual review, the fifty "pool" cases presently being handled by private counsel will be swamped when compared in the way of case relief with the many more SVP cases that will be added to more than replace them -- potentially sixteen cases per attorney, assuming every prisoner appeals.

This office exists to win criminal appeals. The chance of relief from an adverse ruling on annual review in an SVP case is extremely small. However, if our office is ordered to handle these annual review SVP cases under the Appellate Court system now in place relief will be virtually impossible to obtain. By the time this Court considers the annual review, more than a year will elapse. Consequently, an expedited review which would include a procedure for expedited transcripts, and expedited decision making by this Court, would be, respectfully, required.

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The present system which allows for the court reporters to be paid larger fees for expedited transcripts would have to be revised because it would cost this agency too much money otherwise in a time of limited funding for indigent defense. I am advised that an SVP offender can appeal an adverse probable cause hearing, in addition to an adverse jury trial finding.

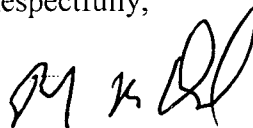
Expedited processing of these cases would mandate very few, if any, extensions for this office and the Attorney General's Office. Without all of these changes to the present system of appellate review meaningful relief is not possible because the SVP Appellant will have already "moved on" to his next annual review. That is precisely what occurred in State v. Simmons, 402 S.C. 373, 741 S.E.2d 27 (2013) a case handled by Appellate Defender LaNelle Durant.

In Appellate Practice in South Carolina, Chief Justice Toal, strongly stresses that constant rewording is needed in order for the final product of a brief to be good. She advises that non-lawyers should read the brief as well as fellow attorneys to ensure the brief is clear and understandable. "After reviewing and editing the brief should set it aside for a few days. Reviewing it after some time has passed will allow him to see errors that were previously unapparent." Appellate Practice in South Carolina, at page 236. Adding on all of these SVP appeals onto an already "crushing caseload" would only be a major step backward.

We are striving to provide quality advocacy, and an unfunded mandate of the enormity contemplated here will, simply, break our backs. Unlike trial work which is most often resolved through plea bargaining, every appellate case, as you know, requires a suitable degree of meticulous attention and research.

We have made great progress by Patton Adams, our Executive Director, adding two Appellate Defenders, and we are trying to convince the Legislature to fund two more. I am very grateful to you for the Appellate Practice program and the fifty cases involved. I am respectfully asking for the opportunity to meet with you before you make a final ruling on this matter. I hope my candor is accepted in the spirit in which it has been offered.

Respectfully,



Robert M. Dudek  
Chief Appellate Defender

RMD/kam

cc: Donald J. Zelenka, Esquire  
Salley Elliott, Esquire