March 1, 2018

James T. Dixon, Jr.
Louisiana Public Defender Board
301 Main Street, Suite 700
Baton Rouge, LA 70825

Re: Louisiana Capital Defense Guidelines

Dear Mr. Dixon:

I am Director and Chief Counsel of the American Bar Association’s Death Penalty Representation Project. The Project helped oversee the drafting of the 2003 ABA Guidelines for the Appointment & Performance of Defense Counsel in Death Penalty Cases (Guidelines) and tracks their use in case law, rules, and statutes. We also track other counsel appointment and performance standards in every U.S. jurisdiction that uses the death penalty and provide training and technical expertise to attorneys and law makers about the requirements for effective representation in capital cases.

The ABA, which takes no position on the death penalty per se, has called on all death penalty jurisdictions to implement and enforce the Guidelines, which are not aspirational but instead reflect the minimum requirements for effective capital representation. These standards have been used in more than 350 reported court opinions to assess the qualifications or performance of defense counsel, including in the overwhelming majority of state high courts, all of the federal circuit courts of appeals, and the U.S. Supreme Court.

The Louisiana Capital Defense Guidelines were codified at La. Admin Code, tit. 22, pt. XV, ch. 9, with the stated goal to “adopt and apply the guidelines for capital defense set out by the American Bar Association’s Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases,” its associated Commentary and the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.” These Louisiana Guidelines represent an important step toward ensuring that each capital defendant and prisoner receives high quality representation. As noted in the commentary to the ABA Guidelines, the level of representation provided is “crucial to ensuring a reliable determination of guilt and the imposition of an appropriate sentence.” While Louisiana has been reported to have one of the highest rates of reversals and one exoneration for every three executions [F. Baumgartner & T. Lyman, “Louisiana Death Sentenced Cases and Their Reversals, 1976-2015,” THE JOURNAL OF RACE, GENDER, AND POVERTY, vol. 7 (2016)] these standards represent a significant step forward in reducing wrongful convictions and preventing reversals based on ineffective assistance of counsel.
As part of the Project’s work to track and assist with issues related to the provision of capital defense counsel, we have followed with concern the growing problems that Louisiana is facing in funding for indigent defense and their impact on the availability of counsel in capital cases. E.g. Christopher Zoukis, “Latest Louisiana Public Defenders Funding Problem: No Lawyers for Death Penalty Defendants,” HUFFINGTON POST (Dec. 12, 2017). We recognize the challenges, financial and otherwise, that are inherent in maintaining a high quality indigent defense system and commend the Louisiana Public Defender Board for its continuing commitment to ensuring that every person facing a death sentence receives the effective assistance of counsel. The decision to prioritize the quality and availability of defense counsel over financial concerns is a difficult but essential choice that must be made to protect our most fundamental constitutional rights.

If the ABA and the Death Penalty Representation Project can be of any assistance as you work to address these issues, please do not hesitate to reach out to me.

Sincerely,

Emily Olson-Dault