Nos. 10-930 and 11-218 [CAPITAL CASES]

# In the Supreme Court of the United States

CHARLES L. RYAN, DIRECTOR,
ARIZONA DEPARTMENT OF CORRECTIONS,
*Petitioner*,

v.

ERNEST VALENCIA GONZALES,
*Respondent*.

TERRY TIBBALS, WARDEN,
*Petitioner*,

v.

SEAN CARTER,
*Respondent*.

*On Writs of Certiorari to the United States Courts of Appeals for the Ninth and Sixth Circuits*

## BRIEF OF THE AMERICAN BAR ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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## QUESTIONS PRESENTED

Gonzales v. Ryan (No. 10-930):

> Whether 18 U.S.C. § 3599(a)(2), which provides that an indigent capital inmate pursuing federal post-conviction relief "shall be entitled to the appointment of one or more attorneys," entitles such a prisoner to a stay of his federal post-conviction proceedings if he is not competent to assist his counsel.

Tibbals v. Carter (No. 11-218):

1. Do capital prisoners possess a "right to competence" in federal habeas proceedings under *Rees* v. *Peyton,* 384 U.S. 312 (1966)?

2. Can a federal district court order an indefinite stay of a federal habeas proceeding under *Rees*?

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## INTEREST OF *AMICUS CURIAE*

The American Bar Association ("ABA"), as *amicus curiae*, respectfully submits this brief in support of the Respondents.[1] The ABA requests that the Court hold that the statutory right to an attorney under 18 U.S.C. § 3599 includes an effective attorney-client relationship, which requires that a federal defendant or habeas petitioner be sufficiently competent to assist counsel in prosecuting his claims and, if he is not, that he be entitled to an appropriate stay.

The ABA is the largest voluntary professional membership organization and the leading organization of legal professionals in the United States. Its nearly 400,000 members practice in all 50 States, the District of Columbia, and the U.S. Territories, and include attorneys in private firms, corporations, non-profit organizations, and government agencies. They also include judges, prosecutors, defense attorneys and public defenders, as well as legislators, law professors, law students, and non-lawyer "associates" in related fields.[2]

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[1] Pursuant to Rule 37.6, *amicus curiae* certifies that no counsel for a party authored this brief in whole or in part and that no person or entity, other than *amicus*, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief have been filed with the Clerk of this Court.

[2] Neither this brief nor the decision to file it should be interpreted as reflecting the views of any judicial member of the ABA. No member of the ABA Judicial Division Council participated in this brief's preparation or in the adoption or endorsement of the positions in it.

For over a century, the ABA has been committed to advocating for the ethical and effective representation of all clients, including criminal defendants. In 1908, the ABA adopted the Canons of Professional Ethics as a model for the regulation of attorneys by their state and jurisdictional highest courts. Amended over time, the Canons are now published as the ABA Model Rules of Professional Conduct ("Model Rules").[3] The Model Rules have been adopted in all but a handful of jurisdictions. Arizona, pertinent to Mr. Gonzales' case, adopted the 1983 Model Rules with some amendments in February 1985, and the 2002 amendments in 2003. Ohio, pertinent to Mr. Carter's case, used a version of the 1969 ABA Model Code of Professional Responsibility until adopting its version of the Model Rules in August 2006 (effective Feb. 2007).

In 1908, the ABA established the entity now known as the ABA Standing Committee on Ethics and Professional Responsibility, which publishes formal ethics opinions on professional and judicial conduct, provides informal responses to ethics inquiries, and upon request assists professional organizations and

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[3] The Model Rules, like the Canons and the intervening Model Code of Professional Responsibility, are developed by task forces composed of members of the ABA and national, state, and local bar organizations; they are then reviewed by academicians, practicing lawyers, and the judiciary. They become ABA policy only after vote of the ABA House of Delegates ("HOD"), which is composed of more than 550 representatives from States and Territories, state and local bar associations, affiliated organizations, ABA sections, divisions and members, and the Attorney General of the United States, among others. Information on the HOD is available at http://www.americanbar.org/groups/leadership/house_ of_delegates.html (last visited July 26, 2012).

courts in their development, modification, and interpretation of the Model Rules and other ethical standards.[4] Pertinent to the issues now before the Court is *ABA Formal Ethics Opinion 96-404, Client Under a Disability*, *reprinted in* ABA/BNA Lawyers' Manual on Professional Conduct 109, 110 (ABA 2006) (hereinafter, "Ethics Op."), which is discussed in the Argument, below.

In 1920, the ABA Criminal Justice Section was formed to advocate for improvements in the criminal justice system and in 1964, it began work on the ABA Standards for Criminal Justice ("ABA Standards"). The first edition was published in 1973. Amended over time, the ABA Standards are a collection of "best practices" based on the consensus views of a broad array of criminal justice professionals.[5]

In 1989, the ABA Death Penalty Representation Project presented its Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, which were adopted as ABA policy. These Guidelines were subsequently revised and adopted by the ABA in 2003 and have now been widely adopted by state and local bar associations and indigent defense organizations, and by court rule in many death penalty

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[4] For the Model Rules of Professional Conduct and information on this Standing Committee, *see* http://www.americanbar.org/groups/professional_responsibility.html (last visited July 26, 2012).

[5] For the Standards for Criminal Justice and information on the Criminal Justice Section, *see* http://www.americanbar.org/criminaljustice/policy/standards.html (last visited July 26, 2012).

jurisdictions.[6] For more than 25 years, this ABA Project has also provided training and resources to defense counsel and judges, and has recruited hundreds of ABA members to represent *pro bono* death-sentenced prisoners who lack legal counsel. In addition, in 2001, the ABA Death Penalty Moratorium Implementation Project was formed to work with jurisdictions in undertaking comprehensive examinations of their capital punishment laws and processes.[7]

Finally, in 2003, following this Court's ruling in *Atkins* v. *Virginia*, 536 U.S. 304 (2002), the ABA Task Force on Mental Disability and the Death Penalty was formed by the ABA Section of Individual Rights and Responsibilities to consider the extent to which impaired mental conditions other than mental retardation should be exempted from the death penalty.[8] Its conclusions as to prisoners who are

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[6] For the Guidelines and information on the Death Penalty Representation Project, *see* http://www.americanbar.org/advocacy/other_aba_inititives/death_penalty_representation.html (last visited July 26, 2012).

[7] For information on the Death Penalty Moratorium Implementation Project, *see* http://www.americanbar.org/groups/individual_rights/projects/death_penalty_moratorium_implementation_project.html (last visited July 26, 2012). Since 2003, the Moratorium Implementation Project has completed studies of eight death penalty jurisdictions and is studying six additional jurisdictions.

[8] ABA, *Recommendation and Report on the Death Penalty and Persons with Mental Disabilities,* Mental and Physical Disability L. Rep., Sept.-Oct. 2006, at 668 (hereinafter, "*Report on the Death Penalty and Persons with Mental Disabilities*"). The Task Force

unable to assist counsel in post-conviction proceedings were adopted as ABA policy in 2006[9] and are discussed in the Argument below.

Throughout the ABA's century-long commitment to the development of model codes, standards, and guidelines, the ABA's focus has been ensuring that all clients, including capital habeas petitioners, receive quality legal representation. Having concluded that meaningful communication between a client and his lawyer is essential to an effective attorney-client relationship, the ABA respectfully urges this Court to hold that the statutory right to an attorney under 18 U.S.C. § 3599 must include knowing, rational communication and decision-making by the prisoner and an appropriate stay when the prisoner is not competent to participate.

## SUMMARY OF ARGUMENT

For the right to appointment of counsel under § 3599 to be meaningful, the appointment must result in an attorney-client relationship that includes both the right to knowing, rational communication and decision-making by the capital habeas petitioners and,

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was composed of 24 lawyers and mental health professionals, both practitioners and academics, and included members of the American Psychiatric Association and the American Psychological Association. Its conclusions were submitted to the ABA House of Delegates as Recommendation with Report #122A and adopted as ABA policy in August 2006. With minor changes, the Recommendation with Report was officially endorsed by the other two groups. *Id.* at 668-69.

[9] *Id.*

in appropriate circumstances, the right to an appropriate stay of proceedings when they are not competent to participate. Further, the lawyers appointed under § 3599 must retain their ability to comply with their licensing jurisdictions' formulations of the Model Rules. The Model Rules require that the lawyers maintain, as far as reasonably possible, normal lawyer-client relationships, and that they initiate appropriate protective actions, which may include moving for a stay of proceedings when they reasonably believe their clients cannot adequately act in the clients' own interests.

Under the Model Rules, effective communication between the client and lawyer is presumed. When the normal relationship is impaired, the lawyer should continue as far as reasonably possible to take actions consistent with the client's directions and decisions. Because the attorney-client relationship is one of agent and principal, however, a lawyer has no choice but to withdraw if the client's impairment is such that the lawyer is unable to comply with his or her responsibilities under the Model Rules. However, if withdrawal cannot be accomplished without material adverse effect on the client, the Model Rules provide for the lawyer to continue the representation and seek appropriate protective action on behalf of the client.

While the Model Rules permit a lawyer to seek and federal habeas law provides for appointment of a guardian in appropriate circumstances, appointment of a guardian is a serious deprivation of the client's rights and should not be undertaken by the lawyer if other, less drastic, solutions are available. Consistent with the Model Rules, accordingly, the ABA asserts that a lawyer appointed under § 3599 must be able to

pursue "other protective action," including moving for a stay of proceedings in appropriate circumstances.

Clearly, an attorney's showing that a capital habeas petitioner's incompetence will prevent a fair and accurate resolution of specific claims should be sufficient grounds for a stay. However, the showing required should be flexible, and based on the wide variety of difficulties that arise from a prisoner's impairments and the circumstances of the case. Accordingly, the ABA requests that this Court hold that § 3599 also requires that courts use a flexible standard based on the particular incompetency of a petitioner and the circumstances of the case in determining whether a stay is appropriate.

## ARGUMENT

### I. FOR SECTION 3599'S RIGHT TO AN ATTORNEY TO BE MEANINGFUL, THE ATTORNEY-CLIENT RELATIONSHIP MUST INCLUDE BOTH KNOWING, RATIONAL COMMUNICATION AND DECISION-MAKING BY THE CAPITAL HABEAS PETITIONERS AND AN APPROPRIATE STAY WHEN THEY ARE NOT COMPETENT TO PARTICIPATE.

This Court, in its unanimous opinion last term in *Martel* v. *Clair*, stated that when Congress passed the legislation now known as 18 U.S.C. § 3599, which governs the appointment of counsel in capital cases, it did so in light of "'the seriousness of the possible penalty and . . . the unique and complex nature of the

litigation.'" 132 S. Ct. 1276, 1284-85 (2012) (quoting 18 U.S.C. § 3599(d) (2006)).[10]

The ABA respectfully asserts that for the right to appointment of counsel to be meaningful, the appointment must result in an attorney-client relationship in which there is a right to knowing, rational communication and decision-making by the capital habeas petitioners and, in appropriate circumstances, a right to a stay of proceedings when they are not competent to participate. Further, the lawyers appointed under § 3599 must retain their ability to comply with their licensing jurisdictions' formulations of the Model Rules. This requires that the lawyers maintain, as far as reasonably possible, normal lawyer-client relationships, and when the lawyers reasonably believe that their clients cannot adequately act in the clients' own interests, that they initiate protective actions that, in appropriate circumstances, may include a request for a stay of proceedings.

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[10] The ABA notes that, in *Tibbals* v. *Carter,* Respondent Mr. Carter's brief addresses § 3599 in the alternative. While the ABA, in this brief, addresses only § 3599 as it applies to the duties of lawyers under the Model Rules, the ABA agrees with Respondent Carter that the courts have inherent equitable power to impose stays as a matter of discretion.

### A. Effective Legal Representation Requires That Lawyers Comply With The Licensing States' Formulations Of Model Rule 1.14 When Representing Clients Who Are Not Competent

As the Court stated in *Martel*, § 3599 "seeks to promote effective representation for persons threatened with capital punishment" and "aims in multiple ways to improve the quality of representation afforded to capital petitioners and defendants alike." 132 S. Ct. at 1285. It sets requirements, *inter alia,* for counsel's level of legal experience and rates of compensation, "in part to attract better counsel." *Id.* These measures "'reflec[t] a determination that quality legal representation is necessary' in all capital proceedings to foster 'fundamental fairness in the imposition of the death penalty.'" *Id.* (quoting *McFarland* v. *Scott*, 512 U.S. 849, 855, 859 (1994)).[11] In order for there to be "effective" and "quality" representation when a client is not competent, lawyers must comply—at a minimum—with their licensing jurisdictions' formulations of Model Rule 1.14(a) and (b).[12]

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[11] *See also McFarland,* 512 U.S. at 859 ("By providing indigent capital defendants with a mandatory right to qualified legal counsel in these proceedings, Congress has recognized that federal habeas corpus has a particularly important role to play in promoting fundamental fairness in the imposition of the death penalty.").

[12] Arizona Rule of Professional Conduct 1.14, pertinent to Mr. Gonzales petition, and Ohio Rule of Professional Conduct 1.14, pertinent to Mr. Carter's petition, mirror Model Rule1.14.

Model Rule 1.14(a) provides:

> (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

A "normal client-lawyer relationship presumes that there can be effective communication between the client and lawyer." Ethics Op. at 110 (citing Model Rule 1.4(a)).[13] The relationship also presumes "that the

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[13] Model Rule 1.4(a) states that a lawyer shall:

> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
>
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
>
> (3) keep the client reasonably informed about the status of the matter;
>
> (4) promptly comply with reasonable requests for information; and
>
> (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

Model Rule 1.4(a) is consistent with the common law tradition,

client, after consultation with the lawyer, can make considered decisions about the objectives of the representation and the means of achieving those objectives." Ethics Op. at 110 (citing Model Rule 1.2(a)).[14]

When a normal attorney-client relationship is impaired, the lawyer should "continue to treat the client with attention and respect, attempt to communicate and discuss relevant matters, and continue as far as reasonably possible to take action consistent with the client's directions and decisions." *Id.* (citing Comment 1 to Model Rule 1.14(a)). However, in these circumstances, Model Rule 1.14(b) provides:

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which some federal appellate courts have relied on in concluding that there is a right to competence in habeas proceedings under § 3599. *E.g.*, *Rohan ex rel. Gates* v. *Woodford*, 334 F.3d 803, 807-08 (9th Cir.) (discussing competence in phases of proceedings; concluding that, at common law, competence was tied to "capacity for rational communication"), *cert. denied*, 540 U.S. 1069 (2003); *Holmes* v. *Buss*, 506 F.3d 576, 578 (7th Cir. 2007) (citing *Rohan*); *cf. Upjohn Co.* v. *United States*, 449 U.S. 383, 389 (1981) (noting that attorney-client privilege "recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client") (citation omitted).

[14] Model Rule 1.2(a) states: "[A] lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued." *See also, ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (rev. Feb. 2003), *reprinted in* 31 Hofstra L. Rev. 913, 1009 (2003) ("Overcoming barriers to communication and establishing a rapport with the client are critical to effective representation.").

> When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

In the absence of Model Rule 14(b), where the client's impairment is such that the lawyer is unable to comply with her responsibilities to the client under the Model Rules, the lawyer would have no choice but to withdraw. Ethics Op. at 112 (citing Model Rule 1.16(a)(1)) (withdrawal required where "representation will result in violation of the rules of professional conduct"). In fact, "[b]ecause the relationship of client and lawyer is one of principal and agent, principles of agency law might operate to suspend or terminate the lawyer's authority to act when a client is incompetent." *Id.* at 110.

In considering whether to proceed under Model Rule 14(b) or Model Rule 1.16(a)(1), the lawyer must carefully consider the ramifications to the client:

> The particular circumstances may also be such that the lawyer cannot withdraw without prejudice to the client. For instance, the client's incompetence may develop in the middle of a pending matter and substitute counsel may not be able to represent the client effectively due to

> the inability to discuss the matter with the client.

Ethics Op. at 112; *see also* Model Rule 1.16(b) (stating that a lawyer may withdraw if "(1) withdrawal can be accomplished without material adverse effect on the interests of the client").

Without concluding that a lawyer can never withdraw based on the incompetency of a client, the authors of the Ethics Opinion believed that "the better course of action, and the one most likely to be consistent with Rule 1.16(b), will often be for the lawyer to stay with the representation and seek appropriate protective action on behalf of the client." Ethics Op. at 112 (citing Model Rule 14(b)). That is, the Model Rules permit a narrow exception to the normal responsibilities of a lawyer to the client by "permitting the lawyer to take action [under Model Rule 14(b)] that by its very nature must be regarded as 'adverse' to the client." *Id*. at 113-14.

Further, although Model Rule 14(b) permits a lawyer to seek the appointment of a guardian in appropriate circumstances, and while the federal habeas statute anticipates that a petition may be filed by someone acting on the petitioner's behalf in some circumstances, *see* 28 U.S.C. § 2242, "[t]he appointment of a guardian is a serious deprivation of the client's rights and ought not be undertaken if other, less drastic, solutions are available." Ethics Op. at 112. Before taking this step, the lawyer must make "the requisite determination on his own that a guardianship is necessary and is the least restrictive alternative." *Id.* at 114. Similarly,

> Although not expressly dictated by the Model Rules, the principle of respecting the client's autonomy dictates that the action taken by a lawyer who believes the client can no longer adequately act in his or her own interest should be the action that is reasonably viewed as the least restrictive action under the circumstances.

*Id*. at 112.

Accordingly, the ABA asserts that when a lawyer appointed under § 3599 determines that an incompetent capital habeas client cannot adequately act in his or her own interest, the lawyer must be able to pursue "the least restrictive action under the circumstances," and this must include moving for a stay of proceedings in appropriate circumstances. *See id*.

The ABA therefore requests that this Court conclude that appointment of counsel under § 3599 requires an attorney-client relationship that includes the right both to knowing, rational communication and decision-making by the capital habeas petitioner and, in appropriate circumstances, a stay of proceedings when the habeas petitioner is not competent to participate.

### B. Courts Should Use A Flexible Standard In Determining Whether A Stay Is Appropriate Under The Circumstances.

As the ABA Task Force on Mental Disability and the Death Penalty stated in its *Report on Death Penalty and Persons with Mental Disabilities*:

> Many issues raised in collateral proceedings can be adjudicated without the prisoner's participation, and these matters should be litigated according to customary practice. However, collateral proceedings should be suspended if the prisoner's counsel makes a substantial and particularized showing that the prisoner's impairments would prevent a fair and accurate resolution of specific claims . . . .

*Id.* at 674 (citing, *inter alia*, *Council* v. *Catoe*, 359 S.C. 120, 597 S.E.2d 782, 787 (2004)); *Catoe*, 597 S.E.2d at 787 ("[T]he default rule is that [post-conviction review] hearings must proceed even though a petitioner is incompetent. For issues requiring the petitioner's competence to assist his [post-conviction] counsel, such as a fact-based challenge to his defense counsel's conduct at trial, the [post-conviction] judge may grant a continuance, staying review of these issues until petitioner regains his competence.").

Clearly, a showing that a client's incompetence will prevent a fair and accurate resolution of specific claims should be sufficient grounds for a stay, and where the lawyer makes such a showing, the court should stay the proceedings. *See Carter* v. *Florida,* 706 So. 2d 873, 875 (Fla. 1997) ("There can be no question that a capital defendant's competency is crucial to a proper

determination of a collateral claim when the defendant has information necessary to the development or resolution of that claim.").

However, the showing required should be flexible, depending on the prisoner's impairments and the circumstances of the case. For example, a stay may also be appropriate where incompetency prevents the determination of whether the client has viable claims. *See, e.g.*, *People* v. *Owens*, 564 N.E.2d 1184, 1187 (Ill. 1990) ("[Illinois Supreme Court Rule 651] is not satisfied where appointed counsel cannot determine whether a post-conviction petitioner has any viable claims, because the petitioner's mental disease or defect renders him incapable of communicating in a rational manner. In either circumstance, the appointment of an attorney is but an empty formality.") (internal citations omitted); Richard J. Bonnie, *Mentally Ill Prisoners on Death Row: Unsolved Puzzles for Courts and Legislatures*, 54 Cath. U. L. Rev. 1169, 1180 (2005) ("[A] prisoner's impairments could obscure potentially valid claims, preventing counsel from finding out about them at all, or could inhibit his effective participation in an evidentiary hearing involving specific claims that are known to counsel.").

Further, a stay may be appropriate even when all of the facts relevant to the case appear to be widely known. In claims of ineffective assistance of counsel, for example, what was presented at trial will be set out in the record. However, a competent defendant may enhance his counsel's understanding of the importance of information known by counsel and provide information that was not presented, thereby enhancing his counsel's ability to demonstrate an unappreciated

importance of presented as well as missing information to the court. *See, e.g.*, *Holmes* v. *Buss*, 506 F.3d at 580 (noting that in pursuing post-conviction relief a client "may—if mentally competent—be able to convey to his lawyers a better sense of the alleged misbehavior of the prosecutor and of defense counsel than the trial transcript and other documentation provide").

Also, as to "strategic" choices—even those commonly perceived to be within the expertise of appellate counsel—it may be necessary for a client to be able to communicate with counsel when, under the Model Rules, they are choices for the client to make. As stated by the Seventh Circuit:

> When the issue is competence to *appeal*, the tactical question whether to plead incompetence and if one prevails perhaps remain on death row for the rest of one's life, or to press for a new trial even at the risk of another conviction and another death sentence, becomes all-important, and it is a question on which input from the petitioner is vital. It's not really a lawyer's decision at all, though the lawyer can advise on the likelihood that habeas corpus relief will be granted and, if so, that the petitioner will again be sentenced to death and perhaps have then no basis for seeking relief.

*Holmes* v. *Levenhagen*, 600 F.3d 756, 758-59 (7th Cir. 2010).

Finally, a stay may be appropriate where the lawyer informs the court that, contrary to his obligations to the client under the Model Rules, the

lawyer cannot conscientiously accede to his client's instructions because of evidence casting doubt on the client's mental competency. *See, e.g.*, *Rees* v. *Peyton,* 384 U.S. 312, 313-14 (1966) (directing trial court to determine "whether [Rees] has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises").

As the *Report on Death Penalty and Persons with Mental Disabilities* explained:

> Thorough post-conviction review of the legality of death sentences has become an integral component of modern death penalty law, analogous in some respects to direct review. Any impediment to thorough collateral review undermines the integrity of the review process and therefore the death sentence itself.

*Id.* at 674. As illustrated in each of the circumstances above, a prisoner's competence to communicate rationally with counsel may be such an impediment. They also illustrate the variety and complexity of some of the difficulties that lawyers confront when attempting to establish that a stay is appropriate under the circumstances of their clients' incompetence and the facts of their cases.

Accordingly, the ABA requests that this Court hold that appointment of counsel under § 3599 requires both knowing, rational communication and decision-making by capital habeas petitioners and an appropriate stay of the proceedings when they are not

competent to participate, and that it also requires that the courts use a flexible standard, based on the particular incompetency of a petitioner and the circumstances of the case, in determining whether a stay is appropriate.

## CONCLUSION

For the foregoing reasons, *amicus curiae* the American Bar Association respectfully requests that the decisions of the Courts of Appeals for the Sixth and Ninth Circuits be affirmed.

Respectfully submitted,

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