**IN THE SUPREME COURT OF FLORIDA**

CASE NO. 90,143

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**ORANGE COUNTY, FLORIDA,**

Appellant,

**v.**

**FREDDIE LEE WILLIAMS,**

Appellee .

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ON APPEAL FROM THE CIRCUIT COURT
OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, STATE OF FLORIDA

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# BRIEF OF THE CAPITAL COLLATERAL REPRESENTATIVE

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## STATEMENT OF THE CASE AND FACTS

Freddie Lee Williams is a death-sentenced individual represented in postconviction proceedings by volunteer counsel, Chandler R. Muller. On March 7, 1996, the Circuit Court granted an evidentiary hearing as to certain claims in Mr. Williams' Amended Motion for Post Conviction Relief. Volunteer counsel filed a Motion for Costs necessary to develop the facts and obtain testimony for the evidentiary hearing. The Circuit Court granted the Motion for Costs and Orange County now appeals. Initially, this appeal was filed before the Fifth District Court of Appeals. After transfer to this Court, the Office of the Capital Collateral Representative (CCR) was given notice of the appeal and directed to file a brief on or before May 13, 1997.

## SUMMARY OF THE ARGUMENT

The circuit court properly found that Orange County should pay the litigation costs to be incurred by private, volunteer counsel for Mr. Williams. Mr. Williams is entitled under the United States Constitution, Florida Constitution and Florida Statutes to the effective assistance of counsel in postconviction. Mr. Williams may choose to accept the services of volunteer counsel without forfeiting his indigency rights. The County is responsible for litigation costs of indigents. Mr. Williams' volunteer attorney is classified as "personnel necessary" to operate the courts. The County is authorized and required to bear the expenses of the operation of the circuit and county courts. Policy reasons support the affirmance of the trial court's ruling.

CCR is not liable for the litigation costs of non-CCR clients. The CCR statute does not authorize or require CCR to pay the litigation expenses of a non-CCR client. The legislature did not intend that CCR represent all death-sentenced individuals. The legislature did not provide sufficient funding in CCR's budget to pay the litigation expenses of all death sentenced individuals. CCR requests that this Court affirm the Circuit Court's order granting Mr. Williams' motion for continued payment of costs.

## ARGUMENT I

**THE CIRCUIT COURT PROPERLY FOUND THAT ORANGE COUNTY SHOULD PAY THE LITIGATION COSTS TO BE INCURRED BY PRIVATE, VOLUNTEER COUNSEL FOR MR. WILLIAMS.**

In Mr. Williams case, the Circuit Court properly found that:

> 3. **The Court finds that the costs proposed by the Defendant to date are necessary to afford the Defendant due process at an evidentiary hearing and to permit this Court to address this complex postconviction claim. Orange County is therefore responsible for paying these costs.** See § 43.28, Fla. Stat. (1995); Brevard County Bd. of County Com'rs v. Moxley, 526 So. 2d 1023 (Fla. 5th DCA 1988).

(R. 79)(emphasis added). At the outset, CCR fully incorporates herein by specific reference all other legal arguments and factual matters contained in Mr. Williams' Answer Brief.

### A. MR. WILLIAMS IS ENTITLED TO THE EFFECTIVE ASSISTANCE OF POSTCONVICTION COUNSEL. IT IS NOT REQUIRED THAT MR. WILLIAMS BE REPRESENTED BY CCR AND HE MAY ACCEPT THE SERVICES OF VOLUNTEER COUNSEL WITHOUT FORFEITING HIS INDIGENCY RIGHTS.

Mr. Williams is an indigent death-sentenced person whose constitutional claims were found sufficient to require an evidentiary hearing. When a State grants a right to collateral review, it may not deny the right to an indigent simply because of inability to pay. United States v. MacCollom, 426 U.S. 325 (1976); Castle v. United States, 399 F.2d 642, 650 (5th Cir. 1968); see also Smith v. Bennett, 365 U.S. 708, 709 (1961)("[T]o interpose any financial consideration between an indigent prisoner of the State and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws. ").

"The right of an indigent party to have counsel furnished in a legal proceeding is dependent upon the nature of the proceeding. " In the Interest of D.B., 385 So. 2d 83, 89

(Fla. 1980). Mr. Williams has a constitutional and statutory right to counsel in postconviction proceedings. U.S. Const. amend. V, XIV; Art. I, § 9, Fla. Const.; § 27.7001, et. seq.; Accord Spaziano v. State, 660 So. 2d 1363 (Fla. 1995); Spalding v. Dugger, 526 So. 2d 71 (Fla. 1988); Brevard Countv Com'rs v. Moxlev, 526 So. 2d 1023 (Fla. 5th DCA 1988). To the extent the government must provide legal counsel for the indigent, payment of litigation expenses must be made by the county. Interest of D.B., 385 So. 2d at 92-93; Orange Countv v. Corchado, 679 So. 2d 297, 301 (Fla. 5th DCA 1996).

If a State chooses to create a statutory right to postconviction review of criminal convictions and sentences, the State's operation of the postconviction system must comply with the Due Process Clause of the federal Constitution's Fourteenth Amendment, See Evitts v. Lucev, 105 S. Ct. 830, 834 (1985).[1] Of course, Florida provides Mr. Williams the right to seek postconviction review[2] and the right to the effective assistance of counsel in that process. Section 27.7001 et seq., Fla. Stat.; Spaziano v. State, 660 So. 2d 1363 (Fla. 1995); Spalding v. Dugger, 526 So. 2d 71 (Fla. 1988). Further, this Court has recognized that principles of due process govern Florida capital post-conviction proceedings. See, e.g., Huff

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[1]See also Pearson v. Norris, 52 F.3d 740, 742 (8th Cir. 1995)(holding that if avenue of collateral attack is created by state, it must conform to due process standards); Easter v. Endell, 37 F.3d 1343, 1345 (8th Cir. 1994)(holding that once state grants right to post-conviction review, its operation must conform to the due process requirements of the Fourteenth Amendment); Branch v. Turner, 37 F.3d 371, 375 (8th Cir. 1994); Six v. Delo, 885 F.Supp. 1265, 1277 (E.D. Mo. 1995)(holding that where state creates post-conviction right, Fourteenth Amendment entitles him to procedures to ensure that right is not arbitrarily denied); Jackson v. Duckworth, 844 F.Supp. 460, 464 (N.D. Ind. 1994)(holding that post-conviction procedures for convicted prisoners, if state chooses to provide them, must comport with base-line due process).

[2]See Fla. R. Crim. P. 3.850, 3.851 (1996).

v. State, 622 So. 2d 982 (Fla. 1993) (holding that trial court violated post-conviction petitioner's due process rights by signing state's proposed order denying motion to vacate murder convictions and death sentence without affording petitioner opportunity to raise objections or submit alternative order). See also Rose v. State, 601 So. 2d 1181 (Fla. 1992).

Article 1, section 21 of the Florida Constitution guarantees to every person the right to free access to the courts on claims of redress of injury free of unreasonable burdens and restrictions. Swain v. Curry, 595 So. 2d 168 (Fla. 1st DCA 1992). That right is fundamental and restrains the legislature from abolishing or abrogating pre-existing access and causes of action and sharply restricts imposition of financial barriers to assertion of claims. G.B.B. Investments, Inc. v. Hinterkopf, 343 So. 2d 899 (Fla. 3d DCA 1977); Psychiatric Associates v. Siegel, 610 So. 2d 419 (Fla. 1992). Furthermore, the legislature may abrogate or restrict that access only if it shows an overpowering public necessity for abolishment of the right.

Moreover, section 57.081(1), Florida Statutes, states in part:

> Any indigent person who is a party or intervenor in any judicial or administrative agency proceeding or who initiates such proceeding shall receive the services of the courts, sheriffs and clerks, with respect to such proceedings without such charge.. .No prepayment of costs to any judge, clerk, or sheriff is required in any action when the parties has obtained from the clerk in a proceeding a certification of indigency , based on an affidavit filed that the applicant is indigent and unable to pay the charges otherwise payable by law to any such officers.. .

(emphasis added), Presumably, Mr. Williams qualifies for the payment of appropriate costs by the County under this section. "A finding of indigency is based upon only the defendant's financial status. The fact that.. .private counsel . . .represent[s] a defendant does not deprive

him of his right to be declared indigent in order that costs may be taxed against the County. " Guy v. State, 473 So. 2d 234, 235 (Fla. 2d DCA 1985); Johnson v. Snyder, 417 So. 2d 783 (Fla. 3d DCA 1982). Chapter 57, originally enacted in 1937, has made article 1, section 21 meaningful by providing indigent persons with a means of demonstrating their need to proceed without prepayment of costs and fees for the services of the courts, sheriffs and clerks. The right to proceed as an indigent is a substantive right. Sections 57.081 and 57.091 confer that right upon Mr. Williams.

The Circuit Court correctly stated:

> 2. **The Defendant's decision to employ volunteer counsel does not necessarily relieve the County of any obligation it may have to pay for costs.** Compare Johnson v. Snyder, 417 So. 2d 783 (Fla. 3d DCA 1982); Saintil v. Snyder, 417 So. 2d 784 (Fla. 3d DCA 1982); Behr v. Gardner, 442 So. 2d 980 (Fla. 1st DCA 1983).

(R. 78-79)(emphasis added). An indigent defendant who receives the services of a private attorney may obtain reasonable costs from the county. Behr v. Gardner, 442 So. 2d 980, 982 (Fla. 1st DCA 1983); See also Leon County v. Harmon, 589 So. 2d 429, 430 (Fla. 1st DCA 1991); Guy v. State, 473 So. 2d at 235. An indigent defendant is not required to accept the services of a statutorily designated defender, such as CCR, in order to obtain reasonable costs. Thompson v. State, 525 So. 2d 1011 (Fla. 3d DCA 1988); Price v. Mounts, 421 So. 2d 690, 691 (Fla. 4th DCA 1982). If counsel is constitutionally required and indigency is established, a defendant is entitled to costs. Interest of D.B., 385 So. 2d at 92-93; Orange County v. Corchado, 679 So. 2d at 301. The fact that private counsel represents him cannot change this result. Thompson v. State, 525 So. 2d 1011; GUY v. State, 473 So. 2d at 235; Price v. Mounts, 421 So. 2d at 691; Saintil v. Snyder, 417 So. 2d

784, 785 (Fla. 3d DCA 1982); Johnson v. Snyder, 417 So. 2d 783, 784 (Fla. 3d DCA 1982). Thus, because Mr. Williams, an indigent death-row inmate, is entitled under both the Florida Constitution and Florida Statutes to the assistance of counsel, and may choose to accept the services of volunteer counsel, Orange County is responsible for litigation costs incurred by Mr. Williams' volunteer counsel.

**B. VOLUNTEER COUNSEL REPRESENTING A NON-CCR CLIENT IS CLASSIFIED AS "PERSONNEL NECESSARY" FOR THE OPERATION OF THE COURTS. THE COUNTY IS RESPONSIBLE FOR SUCH EXPENSES.**

Volunteer counsel in postconviction proceedings who is not affiliated with CCR is classified under section 43.28, Florida Statutes (1995), as "personnel necessary" for the operation of the courts. Brevard County Com'rs v. Moxley, 526 So. 2d 1023, 1025 (Fla. 5th DCA 1988); see also Interest of D.B., 385 So. 2d at 89; State Dept. of Revenue v. Salch, 673 So. 2d 904; Brevard Board of County Com'rs v. Harris, 657 So. 2d 1233; In Re B.C., 610 So. 2d 627; Palm Beach County ex rel. Adoption of T.G.L., 606 So. 2d 730 (Fla. 4th DCA 1992); Matter of Skinner, 541 So. 2d 781 (Fla. 4th DCA 1989).

Section 43.28, Florida Statutes, governs this case. It provides that:

> The counties shall provide appropriate courtrooms, facilities, equipment, and, unless provided by the state, personnel necessary to operate the circuit and county courts.

In Interest of D.B., this Court defined "personnel necessary to operate the circuit and county courts" this way:

> [W]hen appointment of counsel is constitutionally required to represent an indigent, the case cannot proceed without such an appointment; consequently, such counsel is "personnel necessary" to operate the court. In such an instance, the trial court may require the county to pay appropriate attorney's fees for such representation absent any other statutory provision.

385 So. 2d at 93 (emphasis added). Because no statutory provision exists which would provide Mr. Williams with assistance or representation by CCR, the trial court may require the county to pay. Additionally, no statutory provision exists which authorizes CCR to pay costs incurred by private postconviction counsel for a non-CCR client.[3] Mr. Williams' situation is what the court in Interest of D.B. was contemplating+ Chapter 27, the statute governing CCR, specifically disallows CCR from representing (or assisting) persons who already have lawyers. See Argument IIA. Moreover, private postconviction counsel has been classified as "personnel necessary" to operate the courts. Brevard County Com'rs v. Moxlev, 526 So. 2d 1023 (Fla. 5th DCA 1988).

Thus, Mr. Williams' private, volunteer postconviction attorney is properly classified as "personnel necessary" to operate the courts and Orange County is authorized to bear the litigation costs.[4] The Court's order directing Orange County to bear Mr. Williams' litigation costs should be affirmed.

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[3]Orange County's reliance on § 27.703 is misplaced. Under § 27.703, all death-penalty defendants who are not presently represented by counsel because of a CCR conflict, shall have competent counsel appointed to represent them. The Judicial Administration Commission is authorized to pay fees, costs and expenses incurred by counsel appointed pursuant to this provision. In Re: Special Capital Collateral Representative in Conflict Cases (Fla. Oct. 23, 1996). § 27.703 does not apply to the instant case because Mr. Williams is presently represented by volunteer counsel, Chandler Muller. Mr. Muller was not court-appointed under § 27.703.

[4]Mr. Williams' attorney has represented him pro bono since 1986. (R. 4). Notably, Mr. Williams' attorney only requested that the County pay the costs of the evidentiary hearing. (R. 3-10).

## C. POLICY CONSIDERATIONS DICTATE THAT THE COUNTY IS THE PROPER ENTITY RESPONSIBLE FOR PAYMENT OF A NON-CCR CLIENT'S LITIGATION EXPENSES.

In addition to the above statutes and legal precedent authorizing and requiring the county to pay Mr, Williams' litigation expenses, there are also strong policy considerations supporting the same outcome. In a case holding that a capital defendant who was represented by private counsel should receive costs from the County, the First District Court of Appeals said:

> [S]trong policy reasons support the result reached by the trial court. A contrary conclusion would likely result in a lessened willingness and ability of [those] who might otherwise voluntarily do so, to [provide the assistance of] counsel for indigent adult defendants, ultimately increasing the work load of the already overburdened public defenders of this state.

In Leon County v. Harmon, 589 So. 2d 429, 430 (Fla. 1st DCA 1991).

Likewise, in Orange County v. Corchado, 679 So. 2d 297 (Fla. 5th DCA 1996), the Court held that the county was responsible for the costs of an additional attorney appointed to represent a capital defendant. Id. at 301. Quoting Makemson v. Martin County, 491 So. 2d 1109 (Fla. 1986), the Court stated:

> No citizen can be expected to perform civilian services for the government when to do so is clearly confiscatory of his time, energy and skills, his public service is inadequately compensated, and his industry is unrewarded.. . [G]ood public conscious [does not approve] such shoddy, tawdry treatment of an attorney called upon by the court to represent an indigent defendant in a capital case.

Orange County v. Corchado, 679 So. 2d at 301. The Court continued:

> Trial courts must have the authority to fairly compensate court-appointed counsel. It is the only way to ensure effective

> representation and give effect to the right to counsel in.. .death penalty [] proceedings.

Id. quoting Remeta v. State, 559 So. 2d 1132, 1135 (Fla. 1990).

Such principles are equally applicable here. Mr. Williams has volunteer counsel. He needs the County not to pay attorneys fees, but rather to pay the costs his attorney will incur in order to present his case at an evidentiary hearing. If volunteer attorneys are willing to donate the considerable amount of time and energy required to represent a capital defendant, surely the State has a concomitant obligation to pay for litigation costs. To hold volunteer counsel responsible for litigation costs would surely discourage the all too few attorneys willing to provide pro bono services from donating such services at all in capital postconviction cases. CCR cannot and does not represent all of Florida's death-sentenced individuals. Thus, policy considerations dictate that the County should pay the litigation costs of indigent death sentenced clients not represented by CCR.

Moreover, the County may have a source of reimbursement under section 57.091, Florida Statutes, which provides in part:

> All lawful fees, costs, and expenses hereinafter adjudged against, and paid by, any county in any competency proceedings and all criminal prosecutions against state persons in prison, state correctional institutions, and in all habeas corpus cases brought to test the legality of the imprisonment of state prisoners of such correctional institutions shall be refunded to the county paying the sum from the general revenue fund in the state treasury in the manner and to the extent herein provided. . . .

(emphasis added) .

A Rule 3.850 proceeding is essentially a habeas corpus action and section 57.091 entitles the County to reimbursement from the general revenue fund of the State for Rule

3.850 Proceedings. See Richardson v. State, 546 So, 2d 1037 (Fla. 1989); Jackson v. State, 452 So. 2d 533 (Fla. 1984); State v. Bolyea, 520 So. 2d 562 (Fla. 1988).

This Court should affirm the trial court's ruling.

## ARGUMENT II

### CCR IS NOT LIABLE FOR THE LITIGATION COSTS OF NON-CCR CLIENTS.

In Mr. Williams case, the Circuit Court properly found that:

> 1. **The Capital Collateral Representative is not obligated to absorb the costs of this collateral relief action because the Defendant is represented by volunteer private counsel.** § 27.702(1), Fla. Stat. (1995); Spaziano v. State, 660 So. 2d 1363, 1370 (Fla. Stat. 1995)("[Spaziano] may be represented at the evidentiary hearing by CCR or by competent volunteer counsel.. .at no expense to the State,. . . ").

(R. 78)(emphasis added), CCR fully incorporates herein by specific reference all other legal arguments and factual matters contained in Mr. Williams' Answer Brief

### A. CCR IS NOT AUTHORIZED OR REQUIRED TO PAY THE LITIGATION EXPENSES OF ALL DEATH SENTENCED INDIVIDUALS.

Mr. Williams is not represented by CCR; instead he is represented by a volunteer attorney. There is no authority requiring CCR to pay the litigation costs which a non-CCR client incurs in his postconviction litigation. See State v. White, Case No. CR78-1840 (Fla. 9th Cir. Ct. Dec. 22, 1993)(R. 54-63, at 58); cf. State, Dent. of Revenue v. Salch, 673 So. 2d 904, 905 (Fla. 2d DCA 1996). No statute, rule, or appellate decision requires or even permits CCR to pay the litigation costs borne by volunteer counsel during the representation of a non-CCR client. Moreover, the CCR statute does not authorize courts to impose such litigation costs on CCR. Cf. State v. Bottoson, Case No. 79-4912 (Fla. 9th Cir. Ct. March

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4, 1994)(R. 50-53); State v. White, Case No. CR78-1840 (Fla. 9th Cir. Ct. Dec. 22, 1993)(R. 57).

In 1986, when volunteer counsel assumed representation of Mr. Williams, Chapter 27 specifically stated:

> The Capital Collateral Representative shall represent, without additional compensation, any person convicted and sentenced to death in this state who is without counsel and who is unable to secure counsel due to his indigency or determined by a state court of competent jurisdiction to be indigent for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgement and sentence imposed against such person.. . .

(emphasis added). A plain reading of the statute reveals that it did not impose a duty on CCR to represent all death row inmates in all postconviction proceedings. Compare Behr v. Gardner, 442 So, 2d at 982. By statute, CCR clients were those who (1) were without counsel and (2) were unable to secure counsel due to indigency .

Today the CCR status reads:

> (2) The capital collateral representative shall represent each person convicted and sentenced to death in this state in collateral postconviction proceedings, unless a court appoint or permits other counsel to appear as counsel of record.

Section 27.701(2) (1996). While the requirement of indigency is gone, the legislature continues to recognize that there are CCR clients and non-CCR clients.

In light of Chapter 27, the County and not CCR, should be responsible for the costs of postconviction litigation by non-CCR clients. Chapter 27 did not obligate CCR to represent Mr. Williams in 1986, because he was represented by counsel. Chapter 27 does not obligate CCR to represent Mr. Williams now because the Court has permitted other

counsel to appear as counsel of record. Whether indigent or not, persons who have counsel are not represented by CCR. Mr. Williams is represented by private, volunteer counsel. He is not a CCR client and CCR is not responsible for his litigation costs.

The fact that legal representation of some death row inmates is the statutorily mandated responsibility of CCR does not mean that CCR is financially responsible for the litigation costs of death sentenced individuals represented by volunteer counsel. See Department of Health v. Cole, 574 So. 2d 160 (Fla. 5th DCA 1990); Brevard v. Harris, 657 So. 2d 1233. In Cole, the County argued it was not responsible for the litigation costs incurred by a volunteer attorney for the guardian ad litem program. The County claimed that the Department of Health and Rehabilitative Services was responsible for such costs. The Court found "no legal authority nor logical basis" for imposing such costs on HRS and ordered payment from the County. Department of Health v. Cole, 574 So. 2d at 163. The Court stated, "HRS may be many things to many people but it is not a financial clearinghouse for payment to all those involved in child abuse or dependency proceedings. " Id. The same analysis applies to this case and CCR. CCR is not financially responsible for all capital postconviction proceedings. The appropriate party to pay the litigation costs incurred by private, volunteer counsel representing non-CCR clients is the county. See State, Dept. of Revenue v. Salch, 673 So. 2d at 905.

By contrast, section 27.704(2), Florida Statutes, (1995) authorizes the Capital Collateral Representative to appoint part-time assistant capital collateral representatives "who shall serve without compensation at the discretion of the capital collateral representative." By authorizing CCR to recruit its own "volunteers" to represent CCR clients, the legislature

drew a bright line between those lawyers donating services under the auspices of CCR, for whom CCR might have some financial responsibility, and volunteer lawyers who independently initiate postconviction representation of non-CCR clients. CCR could exercise some fiscal control over expenses incurred by its part-time assistants representing CCR clients whereas it properly should have no such responsibility for, or control over, other volunteer counsel not representing CCR clients. See Department of Health v. Cole, 574 So. 2d at 163 ("Absent a clear legislative statement, [agency] is not responsible for.. .costs it did not create and over which it has no control"). CCR incurs no liability for litigation costs associated with volunteer counsel not functioning as an appointed part-time assistant under Chapter 27.

Moreover, CCR is not even financially responsible for death row inmates without counsel (presumably CCR clients) but with whom a conflict of interest exists. Newly amended section 27,703, Florida Statutes, (1996) relieved CCR of the responsibility for the fees of counsel appointed to replace CCR due to a conflict of interest. Whereas section 27.703 formerly mandated payment of conflict counsel from funds "appropriated to the Office of the Capital Collateral Representative, " the payments are now to come from funds, "appropriated to the Justice Administrative Commission. " In Re Special Capital Collateral Representative in Conflict Cases, October 23, 1996. CCR simply is not liable for costs or fees associated with the representation of a non-CCR client.

## B. CCR'S BUDGET DOES NOT INCLUDE SUFFICIENT FUNDING TO PROVIDE FOR THE LITIGATION EXPENSES OF ALL DEATH SENTENCED INDIVIDUALS.

The legislature did not intend for CCR to represent all indigent death sentenced inmates. Chapter 27 has always specifically relieved CCR of the responsibility of representing death sentenced inmates who have volunteer attorneys. Nor did the legislature adequately fund CCR to pay the expenses of all indigent death sentenced individuals, not just CCR clients, out of CCR's appropriations.[5] The Senate Staff analysis completed July 15, 1985, on Committee Substitute for Senate Bill 616, the forerunner of the present CCR statute, outlines the legislative understanding about CCR clients versus other indigent persons represented by volunteer attorneys (R. 73-76). The relevant portion, contained on page 1, states in applicable part:

> Of the 225 inmates on death row, approximately 97 have not had their judgments affirmed by the Florida Supreme Court or been denied clemency and therefore are not at risk for execution. This leaves approximately 128 inmates who are at risk. Of this number, 81 inmates have legal counsel and the Florida Bar has access to an additional 15 volunteer attorneys. There remains approximately 30-35 inmates who are at risk for execution and who have no counsel to represent their collateral appeals. It is this group of inmates which this bill would provide with legal counsel.

(R. 73)(emphasis added).

This portion of legislative history demonstrates that CCR was created as an agency that would be funded to represent those persons who did not have legal representation in

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'Indeed CCR's budget is insufficient to pay the litigation costs of CCR's current clients. As of April'25, 1997, CCR's fiscal resources have been exhausted. With two months remaining in the fiscal year, CCR is unable to incur any additional litigation costs.

postconviction proceedings because of their indigency or because no volunteer lawyer had come forward to take their case. The funding was obviously based on the number of clients to be represented by CCR. The CCR group did not include those death-sentenced individuals who had volunteer counsel. The legislature did not intend to include death-sentenced persons with volunteer counsel within the group of death-sentenced persons it was funding CCR to assist. That is clearly evidenced by the bill analysis, the plain language of the CCR statute, and CCR's present budget which does not include funds for that purpose.

Mr. Muller is not representing a CCR client and therefore did not and cannot look to CCR for reimbursement of any expenses or costs. CCR has no money to pay litigation expenses of non-CCR attorney, Mr. Muller, representing non-CCR client, Mr. Williams.

## CONCLUSION

For the reasons presented and argued herein, the Circuit Court's Order Granting Mr. Williams' Motion for Continued Payment of Costs should be affirmed.

I HEREBY CERTIFY that a true copy of the foregoing Brief of the Capital Collateral Representative has been furnished by United States Mail, first class postage prepaid, to all counsel of record on May 13, 1997.

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