

Lawyers air opinions on death penalty

Chicago Daily Law Bulletin February 27, 2007 Tuesday

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Chicago Daily Law Bulletin

SECTION: Pg. 10001

LENGTH: 676 words

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BODY:

Death penalty cases lack a protocol for the use of depositions and the number of qualifying factors for the ultimate punishment should be reduced, lawyers on Monday told a panel studying capital reforms in Illinois.

Stephen L. Richards, deputy defender in the death penalty trial assistance unit of the office of the state appellate defender, told the Illinois Capital Punishment Reform Study Committee that the use of depositions in capital cases has been successful.

But there are some attorneys who lack civil trial experience who "won't do depositions and refuse to do depositions," Richards said during the nearly five-hour meeting at the James R. Thompson Center.

One of the main reasons for the refusal, Richards said, is that attorneys fear that conducting a deposition will reveal courtroom strategy.

Richards said a solution would be to either have unlimited depositions or allow limited depositions based on a system of witness categories.

For example, eye witnesses and experts could be deposed, but other witnesses would either need court permission or be forbidden altogether from participating in depositions, Richards said.

State Rep. James B. Durkin, an attorney who is a member of the committee, said one issue to consider is that attorneys work in a "system in which cases do not get better with age."

Durkin said he recalls from his days as a prosecutor at the Cook County Criminal Courts Building that defense lawyers would delay cases as long as they could, increasing the chance that a witness may forget details.

Richards responded that his office doesn't delay depositions.

Alan J. Spellberg, a Cook County assistant state's attorney, told the committee that better guidance is needed on when depositions are granted and how much time they will last. "It has been our experience in Cook County that there is a wide variety of the use of the depositions," Spellberg said. "Some judges will order them ... while other judges can be very restrictive in their use."

Another subject addressed was the number of eligibility factors that make a homicide a capital case. Bernard J. Sarley, capital case coordinator for the Cook County public defender's office, said Illinois has too many death penalty cases and eligibility factors.

Currently in Cook County, there are 150 death penalty cases represented by public defenders, accounting for about one-fourth of the first-degree murder cases handled by public defenders, Sarley said. "That's too high of a figure," Sarley said.

Sarley added that the public defender's office faces a cyclical problem of exhausting its capital fund, and the office can't pay bills on time.

"This creates a problem with some of our expert witnesses," Sarley said. "Because I've taken more than one call from an expert witness who said 'Where's my money? I'm not getting paid. And you know what, I'm not working for Cook County anymore because I'm not subsidizing my work for your case.' "

Other topics discussed during the meeting included creating an independent agency to handle victim services and establishing a central registry of capital cases so they can be better tracked.

About a dozen residents and death penalty activists also addressed the panel, using their time as a forum to voice their opposition against capital punishment. But the committee isn't charged with making a recommendation on whether the practice should be continued or abolished.

Under a statutory requirement, the committee presents annual reports on the effects of death penalty reforms to the Illinois General Assembly. A final report is due at the end of next year. The committee consists of lawyers, legislators and professors.

Thomas P. Sullivan chairs the committee and Richard D. Schwind is the vice chair. In addition to Durkin, other panel members are Leigh Buchanan Bienen, James R. Coldren Jr., Kirk W. Dillard, Theodore A. Gottfried, Jeffrey M. Howard, Boyd J. Ingemunson, Gerald E. Nora, Edwin R. Parkinson, Geoffrey R. Stone, Randolph N. Stone, Arthur L. Turner and Michael J. Waller.

Peter G. Baroni is special counsel to the committee.

LOAD-DATE: February 28, 2007
