

FILED

Date 9-18-98 6:15pm Time

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

CASE NO. 98-1929-CIV-T-17F

MARTIN E. GROSSMAN, )  
)  
Petitioner, )  
)  
v. )  
HARRY K. SINGLETARY, JR., )  
Secretary, )  
Florida Department )  
of Corrections, )  
)  
Respondent. )  
)

PETITIONER'S MOTION FOR NUNC PRO TUNC APPOINTMENT  
OF COUNSEL PURSUANT TO THE CRIMINAL JUSTICE ACT

Pursuant to 18 U.S.C. § 3006A, and § 21 U.S.C. 848(q) Petitioner respectfully moves for an order appointing the Office of the Capital Collateral Regional Counsel (CCRC) as counsel to represent him in this federal habeas corpus action. In support of the motion, Petitioner shows:

1. Petitioner is a prisoner presently under a sentence of death in the State of Florida.
2. Petitioner has exhausted his state court remedies and is in a position to seek federal habeas

corpus relief in this district court.

3. Petitioner is indigent and unable to pay the costs incident to a 28 U.S.C. § 2254 action.

He was permitted to proceed in forma pauperis in his state court post-conviction proceedings.

4. CCRC is a state agency charged with the statutory responsibility of providing legal representation in both state and federal capital post-conviction proceedings to any person convicted and sentenced to death in Florida who is without counsel due to his or her indigency. Part IV, Chapter 27, Florida Statutes (1994), is the CCRC enabling statute.

5. CCRC has been recognized by the United States Judicial Conference as an agency not only to be appointed for direct representation of death-sentenced inmates, but also, in appropriate cases, to be appointed to provide legal consulting services to volunteer counsel in death penalty habeas corpus cases.

6. CCRC staff attorneys have acquired the specialized knowledge of state and federal appellate procedure, certiorari practice, state and federal habeas corpus procedure, criminal and Eighth Amendment

jurisprudence necessary to represent effectively those persons in the State of Florida who have been convicted and sentenced to death.

7. CCRC was attorney of record for Petitioner in his state post-conviction and habeas proceedings. It is the policy of the Eleventh Circuit that where the experience of counsel is apparent and no potential conflict of interest exists, district judges should appoint the same lawyers involved in the state post-conviction and habeas proceedings as counsel in the federal habeas proceedings.

8. CCRC will require the services of investigators and experts to represent Petitioner. These services may be approved under subsection (e) of the Criminal Justice Act and § 21 U.S.C. 848(q).

9. The State of Florida, unlike many jurisdictions, has established a statutory right to counsel in capital post-conviction proceedings. It has created and has specially funded CCRC to provide counsel to death-sentenced inmates in post-conviction collateral actions. CCRC representation extends to both the state and federal system to ensure continuity

of counsel.

10. Both the United States Judicial Conference and the Eleventh Circuit have recognized that Criminal Justice Act funds are appropriate for jurisdictions such as Florida which have made a substantial fiscal contribution to providing counsel for death-sentenced inmates.

11. Section 27.702(3) Florida Statutes (1996 Supp.) states:

(3) The capital collateral regional representative shall file motions seeking compensation for representation and reimbursement pursuant to 18 U.S.C. s. 3006A when providing representation to indigent persons in the federal court, and shall deposit such payments received into the Capital Collateral Trust Fund established for such purpose.

WHEREFORE, Petitioner requests:

1. Petitioner be declared indigent and unable to pay the costs attendant to these 28 U.S.C. § 2254 proceedings.

2. CCRC be appointed counsel for Petitioner pursuant to 18 U.S.C. § 3006A, and 21 U.S.C. § 848(q)(4)-(10) and that the date of appointment be entered nunc pro tunc to the date of the denial of

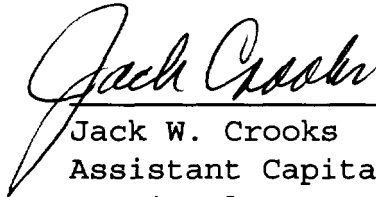
Petitioner's state post-conviction action(s) by the Florida Supreme Court.

3. Petitioner be authorized, after appropriate application, to obtain investigative, expert or other services pursuant to 18 U.S.C. § 3006A(e) and 21 U.S.C. § 848(q)(10).

4. CCRC be awarded attorney compensation to be paid to the Capital Collateral Representative Trust Fund.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing motion has been furnished by United States Mail, first class postage prepaid, to all counsel of record on September 18<sup>th</sup>, 1998.

  
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Regional Counsel-Middle

  
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