WR-80,232-01

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FT. WORTH DIVISION

KWAME A. ROCKWELL	)	**Civil No.**
TDCJ# 999570	)	
Petitioner	)	**(CAPITAL CASE)**
v.	)	
	)	
WILLIAM STEPHENS, Director	)	
Texas Department of Criminal Justice	)	
Correctional Institutional Division,	)	
Respondent	)	
	)	

MOTION FOR APPOINTMENT OF FEDERAL COUNSEL

Undersigned counsel, Brad D. Levenson, Director of the Texas Office of Capital Writs ("OCW"), respectfully moves this Court to appoint David R. Dow as lead counsel and Jeffrey R. Newberry as co-counsel to represent Mr. Kwame Rockwell in his federal habeas corpus proceedings.

This Motion is made within the fifteen (15) day time period required by Texas Code of Criminal Procedure 11.071, section 2(e) ("If the court of criminal appeals denies an applicant relief under this article, an attorney . . . shall, not later than the 15th day after the date the court of criminal appeals denies relief . . . move for the appointment of counsel in federal habeas review under 18 U.S.C. Section 3599."). Because the undersigned is not permitted to "represent a defendant in a

federal habeas review" (*see* Tex. Govt. Code, § 78.054(b)), new counsel must now be appointed.

Mr. Rockwell was sentenced to death in the Criminal District Court No. 4 of Tarrant County, Texas on January 27, 2012. On December 11, 2013, the Texas Court of Criminal Appeals ("CCA") affirmed Mr. Rockwell's sentence on direct appeal. *Rockwell v. State*, No. AP-76,737 (Tex. Crim. App. 2013). On December 17, 2014, the CCA denied relief in state habeas corpus proceedings. *Ex parte Rockwell*, No. WR-80,232-01 (Tex. Crim. App. 2014) (unpublished).

Pursuant to Texas Code of Criminal Procedure Article 11.071, undersigned counsel and the OCW have represented Mr. Rockwell. Mr. Rockwell was then and is now without the means to retain counsel. Mr. Rockwell is an indigent person, lacking the funds necessary to retain counsel and must be appointed counsel "throughout . . . all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures. . . [and] in such competency proceedings and proceedings for executive or other clemency as may be available to the defendant." 18 U.S.C. § 3599(e); *see also Harbison v. Bell*, 556 U.S. 180 (2009).

Mr. Rockwell is entitled to the appointment of counsel under 18 U.S.C. § 3599(a). He has never had his constitutional claims for relief addressed by a federal court. He is entitled to the assistance of counsel in order to present those claims. *See McFarland v. Scott*, 512 U.S. 849, 857-58 (1998).

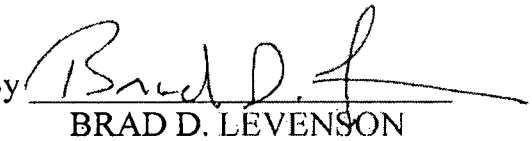
David R. Dow is an attorney licensed to practice law in the State of Texas, the United States District Court for the Northern District of Texas, the United States Court of Appeals for the Fifth Circuit, and the Supreme Court of the United States. Mr. Dow is presently a Distinguished Professor at the University of Houston Law Center where he runs a death penalty clinic, and since 1988 has

represented approximately fifty death row inmates in their post-conviction appeals, including both state and federal habeas corpus proceedings.

Jeffrey R. Newberry is an attorney licensed to practice law in the State of Texas and the United States District Courts for the Southern, Eastern, and Northern Districts of Texas. Working with Mr. Dow, Mr. Newberry has been engaged full-time in the representation of death-sentenced clients (mostly in federal habeas proceedings) since January 2011.

Accordingly, the undersigned respectfully requests that this Court appoint Mr. Dow and Mr. Newberry as counsel for Mr. Rockwell, pursuant to 18 U.S.C. § 3599.

Respectfully submitted,

DATED: December 30, 2014 By 

BRAD D. LEVENSON
Texas Bar No. 24073411
Office of Capital Writs
1700 N. Congress Ave., Suite 460
Austin, Texas 78701
512-463-8502 – direct
512-463-8590 – facsimile

CERTIFICATE OF SERVICE

On December 30, 2014, a copy of the foregoing Motion was served on the Office of the Attorney General by United States mail at the following address:

Office of the Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

Brad D. Levenson

CERTIFICATE OF CONFERENCE

No conference has been held because opposing counsel has not made an appearance in these proceedings.

Brad D. Levenson