

# THE SUPREME COURT *of* OHIO

## TASK FORCE ON CONVICTION INTEGRITY AND POSTCONVICTION REVIEW

---

September 17, 2020  
Meeting Minutes

### Task Force Members in Attendance

**Hon. Gene Zmuda (Chair)**  
Sixth District Court of Appeals

**Sara Andrews**  
Director, Ohio Sentencing Commission

**Hon. Pierre Bergeron**  
First District Court of Appeals

**Hon. Rocky Coss**  
Highland County Common Pleas Court

**Hon. Michael P. Donnelly**  
*Ex-officio member*  
Supreme Court of Ohio

**Sen. Theresa Gavarone**  
District 2

**Mark Godsey, Esq.**  
Ohio Innocence Project

**Rep. David Leland**  
District 22

**John Martin, Esq.**  
Cuyahoga County Public Defender's Office

**Hon. Stephen McIntosh**  
Franklin County Common Pleas Court

**Elizabeth Miller, Esq.**  
*Non-voting Designee of Tim Young*  
Office of the Ohio Public Defender

**Hon. Lindsay Navarre**  
Lucas County Common Pleas Court

**Meredith O'Brien, Esq.**  
Ohio Association of Criminal Defense Lawyers

**Sheriff Tom Rigenbach**  
Buckeye Sheriff's Association

**Joanna Sanchez, Esq.**  
*Non-voting Designee of Tim Young*  
Office of the Ohio Public Defender

**Hon. Nick Selvaggio**  
Champaign County Common Pleas Court

**Andy Wilson, Esq.**  
Office of the Governor

**Dave Yost, Esq.**  
Ohio Attorney General

**Timothy Young, Esq.**  
Ohio Public Defender

## **Welcome Remarks and Introduction of Task Force Chair**

Chief Justice Maureen O'Connor opened the meeting by thanking the Task Force members for their participation, as well as acknowledging the unfortunate absence of the prosecutors from the meeting. Chief Justice O'Connor stated that she would try to convince the prosecutors to return, but that the Task Force would move on with its work regardless.

Chief Justice O'Connor also briefly discussed the motivations behind assembling the Task Force. She cited citizens' anger and frustration with the criminal justice system and the historical inequities in the system as the main drivers for the long-overdue creation of the Task Force.

## **Opening Remarks and Task Force Overview**

Task Force Chair Judge Gene Zmuda acknowledged the limitations of meeting by videoconference, but also recognized the urgent need to get started with the important work of the Task Force.

## **Introduction of Task Force Members**

All present members and designees introduced themselves.

In his introduction, Judge Stephen McIntosh mentioned using other county prosecutor offices, or the Ohio Attorney General, to present to a grand jury in police involved shootings.

Justice Michael Donnelly then made some opening comments on his motivations for pursuing the creation of the Task Force. Justice Donnelly discussed the importance of preserving the freedom of innocent people and the difficulty that those who maintain innocence have in navigating the system after being convicted of a crime.

## **Summary of Reports on Wrongful Convictions**

Staff Liaison Justin Kudela provided Task Force members with background information on the state of innocence projects/commissions and conviction integrity/review units in the United States, exoneration data, and other states' use of task forces and commissions to study wrongful convictions. The presentation concluded that other task forces and commissions found the following to be the most common contributing factors for wrongful convictions: eyewitness identification, false confessions, informant testimony (including jailhouse snitches), forensic evidence/science, discovery practices, competency and accountability for both prosecutors and defense lawyers.

Discussion following the presentation included the following topics:

#### *The Differences and Similarities Between Conviction Integrity Units*

- Some CIUs may be created directly by legislation, while others may be created in a more informal process. There may be differences in the legislation that governs the work of different CIUs.
- Differences in effectiveness may be attributed to a CIU's adherence or lack of adherence to the best practices published by the Quattrone Center for the Fair Administration of Justice at UPenn Law.

#### *Inventory of Previous Work to Address Wrongful Convictions in Ohio*

- Legislation requiring the recording of the interrogation of suspects has recently passed in the Ohio House and is currently pending in the Ohio Senate.
- Some Ohio county prosecutor offices may do *de facto* work regarding conviction integrity while not publicizing that work or maintaining a formal CIU. Specifically, the Franklin County Prosecutor's Office was mentioned as willing to work with the Ohio Innocence Project on DNA testing in cases.
- In an effort to acquire useful information for the Task Force in advance of the first meeting, the Task Force Chair, Judge Zmuda, attempted to gather information on conviction integrity work from Task Force prosecutors, but that effort was met with some pushback and ultimately was halted.
  - Some Task Force members indicated they thought the survey was a good idea and should be attempted again. There was also recognition that the county prosecutors could have a concern with the initial survey and attempt at data collection.
  - There was consensus that all Task Force members will weigh in on the survey questions and then they can be sent out as a written survey to county prosecutors.

#### **Task Force Goals: Parameters, Methodology and Outcomes**

Judge Zmuda briefly outlined a possible methodology to be used for the Task Force's initial analysis:

Step 1: Take inventory of the state of postconviction law in Ohio and the work being done to address wrongful convictions.

Step 2: Compare Ohio with other states.

Step 3: Look into how the issue of conviction integrity can best be approached in Ohio (must legislation be used, etc.?).

Judge Zmuda then asked Task Force members whether they felt it would be useful to split the Task Force into working groups to study the many common issues that contribute to wrongful convictions. There was no opposition, however, whether to split into working groups can be addressed at a later time once consensus has been reached on how to proceed.

### **Discussion of How the Task Force Should Proceed**

Discussion by the Task Force included the following topics:

#### *Possible Recommendation Areas*

- Members expressed desire to address issues such as the lack of a right to funded counsel in postconviction proceedings, delays in rulings on motions for new trial, and the need for education for judges, attorneys, and law enforcement.
- Mark Godsey offered for the Ohio Innocence Project to send a letter outlining which recommendation areas have already been addressed in Ohio and suggesting new recommendation areas.
- Possibility of combining members' suggestions with suggestions offered by Ohio Prosecuting Attorneys Association and the goals outlined by the Chief Justice to form a list of recommendation areas was discussed.
- Justice Donnelly indicated he wants to address the delay that often occurs in ruling on petitions for postconviction relief.
- Judge Rocky Coss indicated that the Rules of Superintendence do require judges to rule on motions within 120 days, and suggested amending the postconviction relief statute to put deadlines for ruling on petitions in the statute.
- Judge Pierre Bergeron indicated that litigants in postconviction review matters do not have a right to counsel, he suggested possibly matching attorneys who need experience to do pro bono work and work with inmates who may have legitimate issues for postconviction relief.
- John Martin suggested that ideas may inadvertently get left out if brainstorming of ideas is not broad enough. He further suggested that Task Force Members send a list of ideas and areas of possible change to the Task Force Chair and Staff Liaison so that they may be discussed at the next meeting.
- Judge Zmuda indicated that the Task Force should review the Ohio Prosecuting Attorneys' Association proposed changes to Ohio Model Rule 3.8.

- Judge Coss recommended looking at the postconviction review laws in other states and comparing them to Ohio.
- Judge Zmuda mentioned that North Carolina doesn't have a statewide conviction integrity unit, but does have an independent commission that looks into claims of actual innocence. He suggested it as a possible model for Ohio since North Carolina is bifurcated like Ohio.
- Judge Zmuda also asked if the Task Force Members wanted to hear from John Hollway of the Quattrone Center for the Fair Administration of Justice at a future meeting. Task Force members agreed it would be good to have him present.

### *Plans for Moving Forward*

- Task Force members agreed that it would be reasonable to make another attempt to survey prosecutors, this time sending the questions formally from the entire Task Force.
- Members also agreed that it would be useful to split into working groups after a set of focus areas had been decided.
- It was decided that members would brainstorm possible recommendation areas before the next meeting. Those ideas would then be sent to the Task Force Chair and Staff Liaison to compile into a comprehensive list that can be discussed at the next meeting. The Task Force members can then decide if the ideas fall within the directives and duties set for the Task Force by the Chief Justice.
- Judge Zmuda will contact John Hollway about having him present at the next meeting.

### *Future Meeting Materials*

- Research on postconviction law in Ohio and other states and will be compiled and provided for members to review as part of the materials for the next meeting.
- Members will receive list of survey questions previously sent to prosecutors so that they may make suggestions.

### **Future Meetings**

Judge Zmuda let members know that he would contact the Chief Justice regarding an extension of the original December 31, 2020 recommendation date considering the delay in holding the first meeting due to COVID-19.

The next meeting of this Task Force is scheduled for October 22, 2020 from 10:00 a.m. to 12:00 p.m.