

**Describe how the nominee has advanced or improved indigent defense practice:**

When Kathleen Cleary started working at the State Public Defender's Office, there were about 50 men and women sentenced to die in Indiana. Today there are 8. There are many reasons for the decrease in Indiana's death row population. Chief among those reasons, though, is the high level of death penalty representation throughout the process. Kathleen deserves as much credit for that area of improvement as any other trial, appellate, post-conviction, or habeas attorney.

She has represented 18 men sentenced to die. Some of those have been executed, but many more have received relief, either in state post-conviction or in federal court. Many of the federal court reversals were based on issues developed and litigated in state post-conviction proceedings.

In 2015, Kathleen's team showed that their client was not competent to be executed. This is one of a small handful of successful competence to be executed cases throughout the United States.

Kathleen is retiring from the State Public Defender's Office, but remaining active in the legal community. She has accepted a position to work on death penalty cases with the federal defender in Kansas City, Missouri.

At a national death penalty seminar some years ago, a speaker said (referring to a previous Indiana Gideon winner), something like, "Indiana is as serious about the death penalty as any other state. There aren't more executions in Indiana because of the work of [that lawyer]." The same thing can be said today of Kathleen.

**Describe how the Nominee serves as an example to other Indiana public defenders:**

Kathleen understands that the foundations of superior representation include knowledge of the relevant facts, understanding of the controlling and illustrative law, and the attorney's

relationship with the client. Having worked in death penalty defense teams for much of her career, she shows that understanding, and the diligence it takes to maintain those qualities, in each of her cases. She understands, and demonstrates, that those qualities transcend an attorney's relationships with clients and co-counsel, and also affect the attorney's relationships with judges and opposing counsel. Kathleen is able to be collegial whenever possible, while never forgetting that the only goal is to achieve the best possible outcome for her client.

**Describe the Nominee's community involvement and service:**

Kathleen's advocacy led to her being honored as the 2015 Amnesty International Abolitionist of the Year for our state. She has been and remains active in her church. She was involved in school and extra-curricular activities in the schools her children attended.

**Describe the Nominee's involvement in the legal community:**

Kathleen's willingness to assist her colleagues is best reflected by array of defenders who support Kathleen's nomination. James Acklin and Cassandra Wright, Chief Deputies to the Public Defender of Indiana, join in this nomination. In addition, many Gideon winners agree that Kathleen should be recognized. The first winner, Robert Hammerle, and the 2016 winner, Marce Gonzales, join us in asking that Kathleen be recognized. Other supporters include previous winners Hope Fey, Tom Hinesley, and Michael Ausbrook. Marce put it best, "I can think of no more fitting winner of the Gideon than Kathleen."

**Describe any obstacles/difficulties the nominee overcame in accomplishing the nominated conduct:**

Representing mentally ill and forgotten clients presents many difficulties. Doing so in the face of hostile courts, intrusive media, and misguided well-wishers can be overwhelming. During much of Kathleen's career at the State Public Defender, she also worked on two or even three active death penalty cases at a time. Those cases had inflexible litigation dates set by the Indiana Supreme Court. Working on those cases was a daunting challenge which Kathleen met with unflinching grace and courage.

**List specific accomplishments that, in your opinion, deserve special recognition:**

1. James Harris

When she was just out of law school, Kathleen joined a team of lawyers representing Harris, who pleaded guilty to murder and rape and was sentenced to die. Harris's team negotiated the vacation of the death penalty and the imposition of a sentence to a term of years.

2. Larry Potts

Potts was convicted of two murders and three attempted murders. Kathleen led the post-conviction team which negotiated the vacation of his death penalty and the imposition of a term of years.

3. Howard Allen

The post-conviction team litigated the issue which ultimately prevailed in federal court.

4. Walter Dye

Investigation and litigation by the post-conviction team led to the post-conviction court granting a new trial for Dye. He was resentenced to life without parole.

5. Michael Dean Overstreet

Kathleen represented Overstreet in post-conviction, and in competence to be executed litigation. Overstreet is one of a handful of prisoners in the nation to have been found not competent for execution.

6. Tom Pruitt

Post-conviction litigation led, ultimately, to penalty relief in the federal court on claims of intellectual disability and ineffective assistance at the penalty phase of Pruitt's trial. Pruitt was resentenced to a term of years.

7. Wayne Kubsch

Post-conviction litigation led, ultimately, to a new trial order by the federal court. Kubsch was resentenced to life without parole.

8. Fredrick Michael Baer

Post-conviction litigation led, ultimately, to penalty relief in the federal court. Baer's resentencing is pending.

9. Daniel Wilkes

Post-conviction investigation resulted in the post-conviction court vacating Wilkes's death sentence. Wilkes was resentenced to life without parole.