The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No. 2025-KD-00767

VS.

ANTOINETTE FRANK

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IN RE: State of Louisiana - Applicant Plaintiff; Applying For Supervisory Writ, Parish of Orleans Criminal, Criminal District Court Number(s) 375-992;

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October 07, 2025

Granted in part. Reversed in part. Remaining issues will be considered in due course. See per curiam.

JDH

WJC

JBM

CRC

Weimer, C.J., dissents in part for the reasons assigned by Guidry, J. and assigns additional reasons.

Griffin, J., concurs in the result and assigns reasons.

Guidry, J., dissents and assigns reasons.

Supreme Court of Louisiana
October 07, 2025

Katie Marjanovic

Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2025-KD-00767

STATE OF LOUISIANA

VS.

ANTOINETTE FRANK

On Writ of Certiorari to the Criminal District Court, Parish of Orleans

PER CURIAM

This case involves the death penalty.[1] We grant, in part, both the attorney general's motion to expedite and writ application. On May 15, 2025, the trial court denied the Attorney General's motion to represent the State and ruled that "no provision in the law and Louisiana Constitution allows for the attorney general's participation in this case, and there is no cause for the attorney general to assume the duties of the district attorney." We disagree.[2]

The attorney general seeks to represent the defendant, who was sued in her official capacity as Warden of the Louisiana Correctional Institute for Women. The attorney general's representation is with the agreement and written request of the Orleans Parish District Attorney. La. Const. art. IV, § 8(1) provides: "As necessary for the assertion or protection of any right or interest of the state, the attorney general shall have authority to institute, prosecute, or intervene in any civil action or proceeding." La. Const. art. IV, § 8(2) grants the attorney general the authority "upon the written request of a district attorney, to advise and assist in the prosecution

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[1] A penalty imposed with the jury's unanimous agreement and previously affirmed by this Court. *State v. Frank,* 99-KA-553 (La. 5/22/07), 957 So.2d 724.

[2] Following amendment, La. C.Cr. P. art. 926(E) provides in relevant part the "petition and successive petitions shall be served upon both the attorney general and the district attorney"; La. C.Cr.P. art. 927(B) (the attorney general can file any exceptions if the district attorney fails to do so); La. C.Cr.P. art. 927.1(D) (deadline of July 1, 2026 for a trial court to rule on anything filed prior to July 1, 2023 and providing that "the district attorney or the attorney general shall have a right to seek mandamus to enforce this [deadline]."

of any criminal case." Thus, whether the proceeding is civil or the attorney general has been requested to enroll, the constitution provides for the attorney general's representation of the defendant.

We have stated that post conviction relief proceedings are "not criminal litigation *per se*" but "are designed to allow petitioners to challenge the legality of their confinement, are hybrid, unique, and have both criminal and civil legal characteristics." *State ex rel. Glover v. State*, 93-2330 (La. 9/5/95), 660 So. 2d 1189, 1197, *abrogated on other grounds by State ex rel. Olivieri v. State*, 2000-0172 (La. 2/21/01), 779 So. 2d 735.[3] Considering the framework expressed in Act No. 393 of the Louisiana Legislature's 2025 Regular Session, the question of the state's representation falls on the civil side of the scale. *See Lemmon v. Connick*, 590 So.2d 574 (1991)(finding it civil for the purposes of the public records act); *Browder v. Dir., Dep't of Corr. Of Illinois*, 434 U.S. 257 (1978); *Murray v. Giarranto*, 492 U.S. 1 (1989). Further, the attorney general is fulfilling a statutory mandate because a suit against "ministerial officers of the state…which may be brought against him in his official capacity, or in which the state may be interested, directly or indirectly, or be in any wise a party…shall be instituted, maintained, defended, or prosecuted by the attorney general as provided by law." La. R.S. 49:461.

The trial court failed to consider Paragraphs (1) and (2) of La. Const. art. IV, Sec. 8, and instead relied upon Paragraph (3) which provides that for "cause" the attorney general may supersede the district attorney. *See e.g. Plaquemines Par. Comm'n Council v. Perez*, 379 So.2d 1373, 1377 (La. 1980) ("The 'cause' requirement refers to a showing that the district attorney is not adequately asserting

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[3] In *Glover,* 660 So.2d at 1194, we also observed that:

> This Court has long recognized that the "Supreme Court's decisions in *MacCollom, Finley, and Murray* convince us that the United States Constitution does not require states to provide post conviction remedies for persons convicted in state courts so long as the states have provided some avenue of direct review of the conviction.

some right or interest of the state."). While there are other circumstances where cause can be evaluated, the attorney general is authorized to represent the state, and any state officer defendants, in post conviction proceedings. There is no authority for the defendant or trial court to question the scope of that representation where the district attorney requested that the attorney general enroll and represent the state.

Effective August 1, 2025, Act No. 393 of 2025 also enacted stricter procedures and deadlines to advance long stagnant post-conviction applications, particularly in death penalty cases. Under Act 393 the attorney general is now provided an even more significant role in intervening to defend these actions.

We take notice that various defendants are advancing similar arguments in state and federal courts in the hope of preventing the attorney general from representing the state. While this is the only state court that has agreed, one federal court has denied the attorney general's motion to enroll.[4] The U.S. Supreme Court has long recognized that "it is well settled that habeas corpus is a *civil* proceeding." *Browder*, 434 U.S. at 269[5] (emphasis added). It is beyond question that, as a matter of state law, the attorney general has the right and authority to represent the State of Louisiana, or a defendant state employee, in a federal civil proceeding, including one brought pursuant to 28 U.S.C. 2254. *See* La. Const. art. IV, § 8(1).

We also exercise our discretion in this important case to consider this application despite it being arguably untimely. The relief allowed is purely discretionary. Our rules expressly authorize relief for untimely filings "due to technical failure." La. Sup. Ct. Rule XLII(6)(f). Here, it is undisputed that the Court's internal system shows the writ application itself was uploaded before

[4] *Blank v. Vannoy,* Docket No. 3:16-cv-00366 (M.D.La. 9/15/25), (Doc. 156)

[5] *Accord*, *Murray,* 492 U.S. at 8 ("Postconviction relief is even further removed from the criminal trial than is discretionary direct review. **It is not part of the criminal proceeding itself, and it is in fact considered to be civil in nature. States have no obligation to provide this avenue of relief**….")(internal citations omitted).

midnight.[6] Thus, we exercise our discretion under these particular facts to review the application.

The State's motion for relief pursuant to La. Sup. Ct. Rule XLII(6)(f) is granted. The petitioner's motion to dismiss the application is denied. The Attorney General is entitled to enroll on behalf of the Warden to represent the State in this matter. We retain this writ application and will consider the remaining issues raised in due course.

GRANTED IN PART, REVERSED IN PART.

[6] While there may be similarities to *Girod Titling Trust v. Pittman Assets, LLC*, 25-0192 (La. 4/15/25), 406 So. 3d 414, the reality is that there is little reason to exercise discretionary relief if a writ was going to be denied anyway.