

“Inmate's lawyers fight funds denial”
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In Denver, lawyers for Oklahoma death row inmate Scott Allen Hain told an appeals court Friday that denial of funds to represent him at a clemency hearing Monday is contrary to normal practice in the state.

Lawyers Steven Presson and Robert Jackson of Norman said a stay of Hain's execution, scheduled for Thursday, is needed while the court deals with the funding issue.

They made their points in a 16-page brief asking all 11 full-time judges of the 10th U.S. Circuit Court of Appeals to reconsider Wednesday's decision of a 3-judge panel that denied the funding.

Hain was sentenced to death for the 1987 murders of 2 Tulsa restaurant workers.

In past years, at least seven federal judges in Oklahoma City and Muskogee have authorized federal funding for lawyers to represent indigent death row inmates at state clemency proceedings, Presson and Jackson wrote.

"Judge Kern's decision was the first time a federal judge in Oklahoma had denied clemency representation," they told the appellate judges.

U.S. District Judge Terry Kern in Tulsa ruled that Hain's lawyers were not entitled to be paid from federal funds for their work in the state proceeding. That ruling was upheld Wednesday in a 2-1 decision by the appeals court.

"It's not the money that's the matter," Presson said, speaking from Norman. "It's the matter that money makes the representation possible, even minimal representation."

He provided the appellate judges with a 1998 letter from David L. Russell, who then was chief judge of the federal court in Oklahoma City. The judge told Presson and Jackson "I am satisfied" that federal law authorizes federal funding.

The lawyers also told the appellate judges that a different panel of the court three months ago issued a decision that conflicts with Wednesday's decision.

Presson said he and Jackson can't afford to pay the costs for Hain's clemency hearing "out of our own pockets."

Presson said he will represent Hain at Monday's hearing, even if he is never paid for that work, but "it won't be (a) thorough" representation.

Presson said he and Jackson have had little time to prepare because they have been so busy on other parts of Hain's case.

If the appeals court does not allow federal funding, it will "essentially end the viability of clemency" in Oklahoma, the lawyers said in their brief.

"Though the state should be funding clemency, it does not."

Lack of funding "will have a supremely debilitating effect on the Oklahoma capital punishment system," they argued. "The question before this court is perhaps the most important capital punishment question to reach this court in a decade."