

**Testimony of Crystal Utley, Mississippi Center for Justice *pro bono* counsel, to the  
Judiciary B subcommittee of the Mississippi House of Representatives**

**January 27, 2010**

Co-chairman Jones, and distinguished members of the Committee, thank you for inviting the Mississippi Center for Justice to testify about the need for key improvements to Mississippi's oversight of residential contractors. I am Crystal Utley, *pro bono* counsel for Mississippi Center for Justice. Among many other duties, I have recruited and trained volunteer attorneys here at home in Mississippi and across the nation to attempt to recover losses for over one hundred and forty five homeowners victimized by contractors after Hurricane Katrina, over 50 of whom were elderly. This does not include those handled internally. These volunteer lawyers were moved to donate their services by the plight of vulnerable, inexperienced, and desperate families who signed contracts and made large up-front payments to contractors who disappeared, quit the job part way through, or performed severely inadequate work. All told, these families signed over \$7 million worth of contracts and suffered \$4.8 million in losses, and have so far obtained only \$188,000 in judgments and collected \$51,000 in compensation for harm done to their most valuable asset despite having some of the best local and national attorneys representing them. Mississippi could improve chances of recovery for the families who have obtained judgments by requiring a contractor to provide proof of liability insurance in order to be licensed. Also helpful is the suggestion to create a home improvement guaranty fund underwritten by a \$100 increase in the initial licensing fee and administered by the Board of Contractors to compensate victims of contractor fraud. Homeowners frequently can be blocked from pursuing their civil cases by contractors who evade service of a summons. Requiring licensed contractors to appoint as their

default registered agent for service of process either the Secretary of State or the Executive Director of the State Board of Contractors would solve this problem. In my opinion, service is one of our top two problems because people lose their civil remedy when their statute of limitations runs due to lack of service on the defendant. Unfortunately, this does not help those like ninety year old Ms. B whose unlicensed contractor disappeared out of the state.

As we cooperated with the contractor fraud investigators for the Mississippi Attorney General's office and local district attorneys, we became aware that Mississippi's criminal statute on contractor fraud is limited to cases of repairs. We welcome the proposal to amend the Home Repair Fraud statute to include contracts for construction, which normally involve substantially greater sums than repair. We also pursued enforcement of state licensing laws before the State Board of Contractors and our clients were struck by the fact that the maximum penalty was no higher for new construction starting at \$50,000 than it was for repairs starting at \$10,000. It makes sense to increase the penalty for unlicensed new construction to \$25,000. At least 102 of our cases involved unlicensed contractors. Aside from the inability to locate and serve contractors, unlicensed contractors are our other biggest problem. It also makes sense to add consumer representatives to the Board of Contractors to enhance the confidence of the average citizen in enforcement decisions.

We have discovered that the lack of accountability caused serious economic repercussions. Since the immediate aftermath of Katrina, the Mississippi Center for Justice expanded our *pro bono* reach throughout the state realizing this is a statewide problem. We have encountered families in North Mississippi facing foreclosure because they paid a contractor who did not do the work so they had to pay again to someone else in order to make their home livable. As a result, they did not have sufficient funds to pay their mortgage.

Let me be clear about one thing: our work in this area has focused on a segment of extreme bad actors within a larger industry of residential builders and remodelers, many of whom are reputable and some of whom even donated services or materials to assist those in need. Our comments should not be misinterpreted to target legitimate responsible members of the residential construction industry. I really appreciate your attention to this issue and am available to answer any questions, to provide supplemental information, and to continue this dialogue. Thank you.