

Faulk, Camilla

From: Ramona Brandes [Ramona.Brandes@nwdefenders.org]
Sent: Wednesday, October 05, 2011 11:35 AM
To: Faulk, Camilla
Subject: Suggested Standards for Indigent Defense - Death Penalty Recommendations

1. I am writing to express my concern with the Suggested Standards for Indigent Defense #14 (2)(A)(iv) which limits qualification of attorneys defending capital cases to those who have previously served as lead or co-counsel on a case in which the death penalty was sought. Very few cases in Washington actually proceed to death-penalty trials, and the current wording of this provision will exclude numerous highly-qualified attorneys on the SPRC 2 list from representing clients on aggravated homicides merely because the capital cases they worked on did not proceed to penalty phase. The best chance an attorney has of successfully defending against the death penalty is to convince the State prior to trial to not seek it. The current wording of this standard will deny the accused access to experienced counsel who have completed aggravated homicide trials that did not proceed to the penalty phase because the attorney successfully mitigating aggravated homicide cases into non-death trials during negotiation. Successful mitigation of a death case to a non-death case is the goal of every capital case defender, and it is imperative that attorneys accomplished in this form of negotiation should not be excluded from capital case representation.
- 2.
3. As you are likely aware, Washington already maintains an extensive check and balance to ensure that defendants receive representation by qualified attorneys in death penalty cases. The Washington Supreme Court's SPRC 2 Application Committee, which reviews the extensive application attorneys must submit for consideration, is best positioned to determine who is qualified to represent defendants in capital cases. The SPRC 2 application requires applicants to fully document their experience and proficiency necessary for capital casework, requires documentation of the training and experience by which the applicant has become learned in the law of capital punishment, requires documentation of all education and training in which the applicant has studied the law of capital punishment, requires the applicant to document and discuss his/her experience and familiarity with the utilization of expert witnesses, requires the applicant to document his/her appellate experience, and requires the applicant to submit writing samples of trial level briefs and memorandum which demonstrated counsel's learning of the law of capital punishment. In any case where the committee has concerns regarding counsel's experience or training, the counsel can seek additional information or deny the certification.

It is my position that the language of Standard 14 (2)(A)(iv) would better serve defendants if the following changes were made:

4. **Trial attorneys' qualifications according to severity or type of case:**
Death Penalty Representation. Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed ~~death penalty case or an aggravated homicide case~~ and in which the decision to seek the death penalty has not yet been made shall meet the following requirements:
 - i. The minimum requirements set forth in Section 1; and
 - ii. At least five years criminal trial experience; and
 - iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
 - iv. Have served as lead or co-counsel in at least one aggravated homicide case ~~jury trial in which the death penalty was sought~~; and
 - v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
 - vi. Have completed at least one death penalty defense seminar within the previous two years; and

- vii. Meet the requirements of SPRC 2.

Thank you for your consideration of this matter.

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