Faulk, Camilla

From: Jeffrey Ellis [jeffreyerwinellis@gmail.com]
Sent: Wednesday, October 19, 2011 9:59 AM
To: Faulk, Camilla
Subject: Proposed rule change

To whom it may concern: I am writing in response to the proposed rule change regarding minimal standards for capital defense attorneys.

I fully support the adoption of standards designed to further the goal of providing each capital defendant with high quality representation. SPRC 2 was such a step.

The committee that has implemented SPRC 2 by creating and monitoring the list of qualified attorneys has, in my opinion, done a very good job. Because SPRC 2 does not have criteria based on quantity, the committee can focus on quality of representation. This is consistent with the ABA Death Penalty Guidelines which provide: "An attorney with substantial prior experience in the representation of death penalty cases, but whose past performance does not represent the level of proficiency or commitment necessary for the adequate representation of a client in a capital case, should not be placed on the appointment roster." The Guidelines further provide: "There are also attorneys who do not possess substantial prior experience yet who will provide high quality legal representation in death penalty cases." The 2003 Guidelines expressly note a switch in focus from objective criteria (number of trials) to a careful review of quality of representation. I agree with this approach.

If this Court decides to adopt the proposed standards, I recommend several changes to those standards as currently proposed.

First, the rule should be reworded so that it applies to "every aggravated murder case where a decision to seek death has not been mande or has been announced. " Using the words "death penalty trial" could lead to some confusion about those cases where death was sought, but where there is an argument about the State's ability to proceed--such as in a case where the State failed to properly serve the notice or in a case where a categorical exemption to the death penalty is raised and a pre-trial hearing will be held to determine its application.

Second, the requirement as serving as lead or co-counsel in a trial where the death penalty was sought should be changed to serving as lead or co-counsel in any aggravated murder trial. Otherwise, trying one death penalty case badly satisfies this element, but repeatedly convincing a prosecutor not to seek a death sentence does not.

Third, the requirement of having previously submitted a "mitigation package" should be limited to capital cases. While I have seen high quality "mitigation packages" presented in persistent offender cases, I have also seen documents in those cases which could be called as a "mitigation package" that are no longer than a paragraph or two, and which contain no social or mental health history. On the other hand, I have not yet read a mitigation package in a three strikes case that I would consider sufficient for a capital case. There are simply too many differences between trying to convince a prosecutor to offer a non-strike plea bargain in a potential persistent offender case and preparing a document designed to convince a prosecutor not to seek the death penalty in an aggravated murder case. The two endeavors are similar, but death is different.

Finally, it should be made clear that "meet the requirements of SPRC 2" means that the attorney must be deemed qualified by the SPRC 2 committee.

I thank you for this opportunity to comment.

-- Jeff Ellis