86R11846 AJZ-F

By:  Sherman, Sr. H.B. No. 3827

A BILL TO BE ENTITLED

AN ACT

relating to the procedures for appointing counsel to represent indigent defendants in certain post-conviction proceedings in capital cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 2, Article 11.071, Code of Criminal Procedure, is amended by amending Subsections (b), (c), and (f) and adding Subsections (d) and (d-1) to read as follows:

(b)  If a defendant is sentenced to death the convicting court, immediately after judgment is entered under Article 42.01, shall determine if the defendant is indigent and, if so, whether the defendant desires appointment of counsel for the purpose of a writ of habeas corpus.  If the defendant has not elected to proceed pro se, is not represented by retained counsel, and desires appointment of counsel for the purpose of a writ of habeas corpus, the court shall appoint counsel [~~the office of capital and forensic writs~~] to represent the defendant as provided by Subsection (c).

(c)  At the earliest practical time, but in no event later than 30 days, after the convicting court makes the findings required under Subsections (a) and (b), the convicting court shall appoint the office of capital and forensic writs unless [~~or, if~~] the office of capital and forensic writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, or the convicting court determines good cause exists for appointment of other counsel. If the office of capital and forensic writs is not appointed under this subsection, the convicting court shall appoint other competent counsel under Subsection (d) [~~(f), unless the applicant elects to proceed pro se or is represented by retained counsel~~].

(d)  If the office of capital and forensic writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, or the convicting court determines good cause exists for appointment of other counsel, the convicting court shall appoint counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code.

(d-1)  On appointing counsel under this section, the convicting court shall immediately notify the court of criminal appeals of the appointment, including in the notice a copy of the judgment and the name, address, and telephone number of the appointed counsel.

(f)  [~~If the office of capital and forensic writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code, the convicting court shall appoint counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code.~~] The convicting court shall reasonably compensate as provided by Section 2A an attorney appointed under this section, other than an attorney employed by the office of capital and forensic writs, regardless of whether the attorney is appointed by the convicting court or was appointed by the court of criminal appeals under prior law. An attorney appointed under this section who is employed by the office of capital and forensic writs shall be compensated in accordance with Subchapter B, Chapter 78, Government Code.

SECTION 2.  Section 6(b-1), Article 11.071, Code of Criminal Procedure, is amended to read as follows:

(b-1)  If the convicting court receives notice that the requirements of Section 5(a) for consideration of a subsequent application have been met and if the applicant has not elected to proceed pro se and is not represented by retained counsel, the convicting court shall appoint, in order of priority:

(1)  the attorney who represented the applicant in the proceedings under Section 5, if the attorney seeks the appointment and is otherwise competent for that purpose;

(2)  the office of capital and forensic writs, if the office represented the applicant in the proceedings under Section 5 or otherwise accepts the appointment in accordance with Chapter 78, Government Code; or

(3)  counsel from a list of competent counsel maintained by the presiding judges of the administrative judicial regions under Section 78.056, Government Code, if counsel is not appointed under Subdivision (1) or (2) or if the convicting court determines good cause exists for appointment of counsel other than counsel described by those subdivisions [~~the office of capital and forensic writs:~~

[~~(A)  did not represent the applicant as described by Subdivision (2); or~~

[~~(B)  does not accept or is prohibited from accepting the appointment under Section 78.054, Government Code~~].

SECTION 3.  This Act takes effect September 1, 2019.