Study raps death row appeal work

Shoddy legal efforts, poor court oversight among issues cited.

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After studying seven years of Texas death row appeals, a legal advocacy group says it has found a disturbing pattern of poor legal work and inadequate court oversight to screen out unqualified lawyers.

Too often, court-appointed lawyers failed to fully research cases, ignored basic legal responsibilities and submitted work shoddy enough to get them sanctioned in other states, such as recycling briefs from previous cases without updating changes in the law, according to the study titled “Lethally Deficient” that was released Tuesday by the Texas Defender Service.

“What we discovered was a whole host of problems,” said Kathryn Kase, executive director of the organization, a nonprofit law firm that provides trial
and appellate representation in capital punishment cases.

“Our direct appeal system in death penalty cases isn’t working,” she said.

The study focused on the first of two mandatory appeals given to death row inmates — the direct appeal, which examines the trial record to find mistakes that could have unfairly or improperly affected the guilty verdict and death sentence.

In 84 direct appeals ruled on by the Court of Criminal Appeals from 2009 to the end of 2015, one-third made arguments that weren’t supported by the trial record or failed to raise a single legal issue, the study found. Three lawyers misstated case facts and Texas law governing capital punishment, the study said.

Many lawyers provided minimal assistance, with only 17 percent filing briefs responding to prosecution arguments and 36 percent declining to ask the U.S. Supreme Court to review the case, the study said. Many defense lawyers failed to request oral arguments before the Court of Criminal Appeals — or opted out if the court scheduled arguments.

The Texas Defender Service hopes its study leads to reforms similar to changes made to the second round of death penalty appeals — the writ of habeas corpus — after a similar study which, followed by an American-Statesman examination, detailed habeas lawyers providing shoddy legal help at taxpayer expense.

The Legislature responded in 2009 by creating an agency now known as the Office of Capital and Forensic Writs and staffing it with experienced lawyers to submit habeas petitions on behalf of death row inmates.

Texas “cannot ensure an adequate and fair system unless the lawyers participating in that process do their job. As of now they are not and the results are often lethal,” said Jordan Steiker, director of the Capital Punishment Center at the University of Texas School of Law.

A state agency also could correct another problem identified by the study — lawyers who take on too many court-appointed cases, limiting their available time and eroding the quality of work, Kase said.

Other recommendations in the study included:
Create a statewide system to appoint lawyers that would monitor their performance and workload.

Appoint two lawyers to handle direct appeals, instead of the one attorney guaranteed by state law, because examining the entire trial record and researching every available issue can be a strain, particularly for solo lawyers who lack support staff.

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