Senate Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 109

SENATE BILL 1204

AN ACT

AMENDING SECTION 41-4301, ARIZONA REVISED STATUTES; RELATING TO THE STATE CAPITAL POSTCONVICTION PUBLIC DEFENDER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-4301, Arizona Revised Statutes, is amended to read:

41-4301. State capital postconviction public defender; office; appointment; qualifications; powers and duties

A. The state capital postconviction public defender office is established.

B. The state is responsible for funding the state capital postconviction public defender office, including start-up costs.

C. The governor shall appoint the state capital postconviction public defender and fill any vacancy in the office on the basis of merit alone without regard to political affiliation from the list of names that are submitted pursuant to sections 41-4302 and 38-211. The state capital postconviction public defender serves a four year term and serves until the appointment and qualification of a successor in office. After appointment, the state capital postconviction public defender is subject to removal from office only for good cause as determined by a majority vote of the nomination, retention and standards commission on indigent defense. A vacancy shall be filled for the balance of the unexpired term.

D. The state capital postconviction public defender shall meet all of the following criteria:

1. Be a member in good standing of the state bar of Arizona or become a member of the state bar of Arizona within one year after appointment.

2. Have been a member of the state bar of Arizona or admitted to practice in any other state for the five years immediately preceding the appointment.

3. Have had substantial experience in the representation of accused or convicted persons in criminal or juvenile proceedings.

4. Meet or exceed the standards for appointment of counsel in capital cases under rule 6.8, Arizona rules of criminal procedure, as determined by the nomination, retention and standards commission on indigent defense.

E. The salary of the state capital postconviction public defender shall equal the annual salary of the chief counsel of the capital litigation section in the office of the attorney general.

F. The state capital postconviction public defender shall:

1. Represent any person who is not financially able to employ counsel in postconviction relief proceedings in state court after a judgment of death has been rendered. Notwithstanding section 11-584, subsection A, paragraph 1, subdivision (g), after a judgment of death has been rendered, a county employed indigent defense counsel shall not handle postconviction relief proceedings in state court unless a conflict exists with the state capital postconviction public defender and a county employed indigent defense counsel is appointed.

2. Supervise the operation, activities, policies and procedures of the state capital postconviction public defender office.

3. Beginning in fiscal year 2007-2008, submit an annual budget for the operation of the office to the legislature.

4. Not engage in the private practice of law or ~~provide outside counsel to any other attorney outside of the state capital postconviction public defender office~~ REPRESENT A PERSON WHO IS NOT ASSIGNED BY THE SUPREME COURT.

~~5. Not sponsor or fund training for any other attorney outside of the state capital postconviction public defender office.~~

~~6.~~ 5. Not provide trial or direct appeal assistance to attorneys outside of the state capital postconviction public defender office. FOR THE PURPOSES OF THIS PARAGRAPH, "TRIAL OR DIRECT APPEAL ASSISTANCE" DOES NOT INCLUDE GENERAL TRAINING.

~~7.~~ 6. Not lobby, during working hours, the state legislature or the Congress of the United States, except as provided by paragraph 3 of this subsection.

~~8.~~ 7. Allocate personnel and resources to postconviction relief proceedings so long as there are no conflicts of interest in representation and all state capital postconviction public defender attorneys are appointed to postconviction relief cases that are eligible for appointment of counsel under section 13-4041.

G. The state capital postconviction public defender may:

1. Accept and spend public and private gifts and grants for use in improving and enhancing the ability to perform the responsibilities of the state capital postconviction public defender office pursuant to this chapter.

2. Employ not more than three deputies and not more than four other employees and establish and operate any offices as needed for the proper performance of the duties of the office.

H. For each person represented, the state capital postconviction public defender office shall request reimbursement from the county in which the person was convicted for fees it incurs pursuant to this section arising out of its representation of that person. The county shall pay fifty per cent of the fees incurred by the state capital postconviction public defender office not to exceed thirty thousand dollars per case.

APPROVED BY THE GOVERNOR APRIL 20, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 21, 2010.