

Article 11.07 Habeas Corpus

Michael S. Falkenberg
Assistant Public Defender
Harris County Public Defender's Office

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What we're doing
(mostly in this order)

1. Habeas Corpus basics & 11.07 basics
2. 11.07 procedure at county level & CCA
3. Best practices and worst pitfalls
4. "Defensive Issues"

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To begin with . . .

- Talk and paper cover the tip of the iceberg of habeas issues
 - Limited to law and procedure
 - So much more involved, particularly for applicants
 - Everything depends on investigation
 - Best practice probably to divide representation into investigation and litigation with the option not to proceed to litigation

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To begin with. . .

- 11.07 work requires a tremendous investment of time and energy.
 - Writ counsel must do everything expected by 6th Amendment Counsel, and more.
 - Re-investigate facts, investigate trial lawyer's investigation, discover school, family, medical, mental health history, prior criminal history, police files, prosecutor files, master trial record . . .

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Practitioner's viewpoint

- Best analogy for applicants is to civil plaintiff work— think of writ as a lawsuit against conviction, it's a collateral attack!
 - Does that make writ prosecutors insurance defense lawyers?
- All the work boils down to a simple legal test.

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Habeas practitioners must know the CCA!

- Paper covers the median applicable law, but the CCA staff and judges are part of every case and can have wildly divergent views.
- Diligent habeas practitioners read everything that comes out of every hand down . . . Most of which is not conveyed in law papers and seminar talks.
- The future at the CCA is extremely unsettled, so the tea leaves will be even more crucial.
- Writ volume at the CCA has been trending lower since pandemic.

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