Example 2. A state appoints counsel for indigent capital defendants in postconviction proceedings from a public defender's office. The appointed defender must be an attorney admitted to practice law in the state and must possess demonstrated experience in the litigation of capital cases. This state would meet the requirement of having established standards of competency for postconviction capital counsel.

Example 3. A state law requires some combination of training and litigation experience. For example, state law might provide that in order to represent an indigent defendant in state postconviction proceedings in a capital case an attorney must—(1) Have attended at least twelve hours of training or educational programs on postconviction criminal litigation and the defense of capital cases; (2) have substantial felony trial experience; and (3) have participated as counsel or co-counsel in at least five appeals or postconviction review proceedings relating to violent felony convictions. This State would meet the requirement of having established standards of competency for postconviction capital counsel.

Example 4. State law allows any attorney licensed by the state bar to practice law to represent indigent capital defendants in postconviction proceedings. No effort is made to set further standards or guidelines for such representation. Such a mechanism would not meet the requirement of having established standards of competency for postconviction capital counsel.

§ 26.23 Certification process.

(a) An appropriate state official may request that the Attorney General determine whether the state meets the requirements for certification under § 26.22.

(b) The request shall include:

(1) An attestation by the submitting state official that he or she is the "appropriate state official" as defined in § 26.21; and

(2) An affirmation by the state that it has provided notice of its request for certification to the chief or presiding justice or judge of the state's highest court with jurisdiction over criminal matters.

(c) Upon receipt of a state's request for certification, the Attorney General will publish a notice in the FEDERAL REGISTER—

(1) Indicating that the state has requested certification;

(2) Listing any statutes, regulations, rules, policies, and other authorities

identified by the state in support of the request; and

(3) Soliciting public comment on the request.

(d) The state's request will be reviewed by the Attorney General, who may, at any time, request supplementary information from the state or advise the state of any deficiencies that would need to be remedied in order to obtain certification. The review will include consideration of timely public comments received in response to the FEDERAL REGISTER notice under paragraph (c) of this section. The certification will be published in the FEDERAL REGISTER if certification is granted. The certification will include a determination of the date the capital counsel mechanism qualifying the state for certification was established.

(e) Upon certification by the Attorney General that a state meets the requirements of § 26.22, such certification is final and will not be reopened. Subsequent changes in a state's mechanism for providing legal representation to indigent prisoners in state postconviction proceedings in capital cases do not affect the validity of a prior certification or the applicability of chapter 154 in any case in which a mechanism certified by the Attorney General existed during state postconviction proceedings in the case. However, a state may request a new certification by the Attorney General to resolve uncertainties concerning or meet challenges to the applicability of chapter 154 in relation to federal habeas corpus review of capital cases from the state based on changes or alleged changes in the state's capital counsel mechanism.

PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES

Subpart A—Protected Disclosures of Information

Sec.
27.1 Making a protected disclosure.