



FIFTH ADMINISTRATIVE JUDICIAL REGION OF TEXAS

STANDARDS AND RULES FOR QUALIFICATION OF ATTORNEYS FOR APPOINTMENT TO DEATH PENALTY CASES PURSUANT TO ARTICLE 26.052, TEXAS CODE OF CRIMINAL PROCEDURE

The Death Penalty Qualified Attorneys Selection Committee of the Fifth Administrative Judicial Region of Texas hereby approves the Standards for Qualification of Attorneys for appointment to Death Penalty cases pursuant to Article 26.052, Texas Code of Criminal Procedure, as follows:

1. The trial court shall appoint at least two death penalty qualified attorneys to an indigent defendant in a capital murder case in which the State seeks the death penalty.

2. **FIRST CHAIR OR LEAD TRIAL COUNSEL**

An attorney appointed as first chair or lead trial counsel in the trial of a death penalty case must:

- a. Be a member in good standing of the State Bar of Texas.
- b. Exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases.
- c. Have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any criminal case nor filed documents admitting that the attorney has rendered ineffective assistance of counsel in any criminal case, unless the Local Select Committee determines by a majority vote that the conduct underlying the finding of ineffective assistance of counsel no longer accurately reflects the applicant's ability to provide effective representation. In addition to the requirements listed herein, the applicant shall furnish to the committee a minimum of three letters from either Texas District Court Judges or Texas Appellate Judges attesting to the applicant's demonstrated ability to effectively represent clients.
- d. Have at least five (5) years experience in criminal defense trial or appellate litigation or board certification in criminal law for at least five years.
- e. Have tried a significant number of felony cases to submission to the jury as lead defense counsel, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies.

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- f. Have experience as counsel in at least one death penalty case to submission to the jury.
- g. Have previous experience as a member of the defense trial counsel team in:
 - (1) the direct examination or cross-examination of mental health or forensic expert witnesses; and
 - (2) the investigation and presentation of mitigating evidence at the penalty part of a death penalty trial.
- h. Have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases. Attorneys qualified as lead counsel on death penalty cases must complete 5 hours of death penalty related continuing legal education [CLE] each year. Two of the 5 hours are allowed to be self-study.
- i. Report annually his or her certification that he or she has maintained compliance with all requirements to continue as qualified counsel in death penalty cases.
- j. List all cases that applicant has tried before a jury within the last five (5) years.

3. SECOND CHAIR TRIAL COUNSEL

An attorney appointed as second chair in the trial of a death penalty case must:

- a. Be a member in good standing of the State Bar of Texas.
- b. Exhibit proficiency in criminal law and commitment to providing quality representation to defendants in death penalty cases.
- c. Have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any criminal case nor filed documents admitting that the attorney has rendered ineffective assistance of counsel in any criminal case, unless the Local Select Committee determines by a majority vote that the conduct underlying the finding of ineffective assistance of counsel no longer accurately reflects the applicant's ability to provide effective representation. In addition to the requirements listed herein, the applicant shall furnish to the committee a minimum of three letters from either Texas District Court Judges or Texas Appellate Judges attesting to the applicant's demonstrated ability to effectively represent clients.
- d. Have at least five (5) years of experience in criminal trial or appellate litigation or board certification in criminal law.
- e. Have participated in continuing legal education courses or other training related to criminal defense.

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f. Have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases. Attorneys qualified as Second Chair counsel on death penalty cases must complete 5 hours of death penalty related continuing legal education [CLE] each year. Two of the 5 hours are allowed to be self-study.

g. Report annually his or her certification that he or she has maintained compliance with all requirements to continue as qualified counsel in death penalty cases.

h. List all cases that applicant has tried before a jury within the last five (5) years.

4. LEAD APPELLATE COUNSEL

An attorney appointed as lead appellate counsel in the direct appeal of a death penalty case must:

a. Be a member in good standing of the State Bar of Texas.

b. Exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases.

c. Have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any criminal case nor filed documents admitting that the attorney has rendered ineffective assistance of counsel in any criminal case, unless the Local Select Committee determines by a majority vote that the conduct underlying the finding of ineffective assistance of counsel no longer accurately reflects the applicant's ability to provide effective representation. In addition to the requirements listed herein, the applicant shall furnish to the committee a minimum of three letters from either Texas District Court Judges or Texas Appellate Judges attesting to the applicant's demonstrated ability to effectively represent clients.

d. Have at least five (5) years experience in criminal trial or appellate litigation or board certification in criminal law for at least five years.

e. Have tried a significant number of felony cases to submission to the jury as lead defense counsel, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies.

e. Have experience as counsel in at least one death penalty case that was handled to conclusion.

f. Have previous experience as a member of the defense trial counsel team in:

(1) The direct examination or cross-examination of mental health or forensic expert witnesses; and

(2) The investigation and presentation of mitigating evidence at the penalty phase of a death penalty trial.

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g. Have participated in the preparation of appellate briefs for the prosecution or defense, or in the drafting of appellate opinions as a staff attorney for an appellate court, in felony cases, including homicide cases and other cases involving an offense punishable as a capital felony or a felony of the first degree or an offense described by Section 3g (a) (1), Article 42.12.

h. Have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases. Attorneys qualified as lead appellate counsel in the direct appeal of a death penalty case must complete 5 hours of death penalty related CLE each year. Two of the 5 hours are allowed to be self-study.

i. Except for good cause, only one counsel may be appointed on the direct appeal of a death penalty case.

5. ADDITIONAL COUNSEL

In order to promote quality representation and to expand and maintain a pool of qualified attorneys, nothing in these standards shall be construed to preclude the appointment of third chair or additional compensated or *pro bono* or volunteer counsel who may, under the supervision of lead counsel and second chair counsel, serve as additional trial counsel in any death penalty case; or, under the supervision of appellate counsel, may serve as additional counsel on appeal in any death penalty case. An attorney applying to a Court to serve in such a capacity is exempt from compliance with these standards. Appointment of additional counsel pursuant to this provision is wholly within the discretion of the trial court. In order to claim credit of such service to qualify as death penalty counsel, such counsel must have attended all pre-trial hearings in the case and all sessions of the trial and must obtain the written certification of first chair counsel or of the Court of such attendance.

6. PROCEDURE FOR APPLICATION

An applicant for inclusion on a list shall complete the application form promulgated by the committee and attach the applicant's resume or professional vita to the application. An application for inclusion on a list shall be submitted for approval to Committee in care of the Fifth Administrative Judicial Region.

The Presiding Judge of the Fifth Administrative Judicial Region shall submit the name of the applicant and a copy of the applicant's application to the committee for approval. An applicant shall be included on an appropriate list by the vote of a majority of the members of the committee.

7. PERIODIC REVIEW BY COMMITTEE

Placement on any list is for a period beginning January 1 or upon approval of an application, whichever is later and ending December 31 of the 2nd anniversary of approval. On or before December 1 of each year, an attorney placed on the list of attorneys qualified for appointment in death penalty cases must present proof to the committee that the attorney has successfully

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completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training specific to the defense of death penalty cases within the twelve month period immediately preceding the request for recertification. Attorneys placed on the list for lead trial counsel and/or lead appellate counsel shall be required to obtain not less than six hours of continuing legal education specific to the defense of death penalty cases.

Proof shall be submitted in a manner determined by the committee. The committee shall remove an attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements or for any noncompliance or violation of the standards for qualification as a death penalty counsel.

The Region Selection Committee shall annually review the list of attorneys posted to ensure that each listed attorney satisfies the foregoing requirements.

If at any time prior to recertification an attorney no longer complies with one or more requirements to be maintained on a list for which the attorney has previously qualified, the attorney shall report, in writing, the attorney's noncompliance to the Presiding Judge of the Fifth Administrative Judicial Region, whereupon, the attorney shall be removed by the committee from any list for which the attorney no longer qualifies. An attorney may be removed from a list by a majority vote of the Local Selection Committee if the committee determines as follows: that the attorney no longer meets the objective qualifications for said list, or that the attorney is no longer fully competent to adequately handle the category of cases associated with said list, or that the attorney no longer exhibits proficiency and commitment to providing quality representation to defendants, or that the attorney has not complied with continuing legal education requirements of applicable law.

8. COMPENSATION OF COUNSEL AND OTHER EXPENSES

a. First chair or lead counsel and Appellate counsel shall be compensated at the rate of \$200.00 per hour for in-court and out-of-court work.

b. Second chair counsel shall be compensated at the rate of \$150.00 per hour for in-court and out-of-court work.

c. Counsel shall be reimbursed for necessary expenses, including travel and housing, according to the rates approved by the Comptroller of Public Accounts.

d. Counsel shall be reimbursed for investigatory costs, unless the Court authorizes direct payment to authorized investigators.

e. Counsel shall be reimbursed for expert witness costs, unless the Court authorizes direct payment to authorized experts.

f. Until the State files a written election not to seek the death penalty in a case, counsel shall be paid in a capital murder case as if the State were to seek the death penalty. After the State

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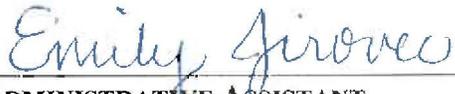
files its election that it will not seek the death penalty, counsel shall be paid as in other criminal cases according to the rates adopted by the county.

9. Upon final approval of these Standards and Rules, the Administrative Assistant shall send a copy thereof to the Local Administrative District Judge of each county of the Region for adoption by the Council of District Judges of each county or by said Administrative District Judge, to the Task Force on Indigent Defense of this State, and to the Office of Court Administration.

These Standards adopted by the DEATH PENALTY QUALIFIED ATTORNEYS SELECTION COMMITTEE OF THE FIFTH ADMINISTRATIVE JUDICIAL REGION and effective November 17, 2011.



J. ROLANDO OLVERA
PRESIDING JUDGE
THE FIFTH ADMINISTRATIVE JUDICIAL REGION OF TEXAS



ADMINISTRATIVE ASSISTANT