

NINTH ADMINISTRATIVE JUDICIAL REGION

Standards for the Qualification of Attorneys to be Appointed to Represent Indigent Defendants in Capital Cases in Which the Death Penalty is Sought Pursuant to Art. 26.052(d) of the Texas Code of Criminal Procedure

STATEMENT OF PURPOSE

The Local Selection Committee of the Ninth Administrative Judicial Region hereby establishes standards for qualification of attorneys eligible for appointment in capital felony cases in which the death penalty is sought in Courts situated within the Ninth Administrative Judicial Region. These standards address the qualifications required for appointment as Lead Counsel at trial, Second Chair at trial, and Appellate counsel.

The Local Selection Committee will maintain a "Capital Felony List" naming those persons who have been determined to be eligible for appointment under the standards set forth herein. The Capital Felony List will be comprised of three (3) sections designated as follows:

1. Lead Counsel
2. Second Chair Counsel
3. Appellate Counsel

Any attorney whose name appears on the approved list for Lead Counsel is deemed to be included on the approved list for Second Chair Counsel.

In order to promote quality representation and to expand and maintain a pool of qualified attorneys, nothing in this plan shall be construed to preclude the appointment of additional compensated or *pro bono* counsel who may, under the supervision of first and second chair, serve as trial counsel in any death penalty case. Attorneys applying to a court to serve in such a capacity are exempt from complying with the qualification requirements of this plan.

APPLICATION

An attorney may apply at any time for inclusion on a list.

REAPPLICATION

In January of each year following an attorney's inclusion on a list, the attorney must present proof in a form acceptable to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to the defense of death penalty cases. The attorney will certify compliance, and continued qualification under the applicable standards, by completing a renewal application in the form set forth on Exhibit B attached hereto. Failure to re-apply and remain qualified shall result in deletion from the list. Notwithstanding the foregoing, the first reapplication shall not occur until the first January following 13 months after the attorney's initial inclusion on the list.

STANDARDS

The standards for inclusion on the list for appointment are as follows:

QUALIFICATIONS FOR LEAD COUNSEL:

For inclusion on the Lead Counsel list, an Attorney shall:

- (A) be a member of the State Bar of Texas;
- (B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
- (C) have trial experience in:
 - (i) the use of and challenge to mental health or forensic expert witnesses; and
 - (ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and
- (D) have successfully completed continuing education courses or other training relating to criminal defense and defense in death penalty cases;
- (E) have practiced in the area of criminal law for at least five (5) years, and during that time demonstrated that he or she has the required legal knowledge and skill necessary to provide representation in capital felonies and will apply that knowledge and skill with appropriate thoroughness and preparation;

- (F) have tried to verdict as lead counsel a significant number of felony trials, including homicide trials and other trials for offenses punishable as first or second degree felonies or capital felonies and at least one of which was a homicide case;
- (G) have tried to verdict one death penalty cases as first or second chair defense counsel; and
- (H) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case.

QUALIFICATIONS FOR SECOND CHAIR COUNSEL:

For inclusion on the Second Chair List, an attorney shall:

- (A) be a member of the State Bar of Texas;
- (B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
- (C) have successfully completed continuing education courses or other training relating to criminal defense.
- (D) have practiced in the area of criminal law for at least five (5) years, and during that time demonstrated that he or she has the required legal knowledge and skill necessary to provide representation in capital felonies and will apply that knowledge and skill with appropriate thoroughness and preparation;
- (E) have tried to verdict as lead counsel or as second chair counsel a significant number of felony trials;

QUALIFICATIONS FOR APPELLATE COUNSEL:

For inclusion on the Appellate Counsel List, the attorney shall:

- (A) be a member of the State Bar of Texas;
- (B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

- (C) have trial experience in:
 - (i) the use of and challenge to mental health or forensic expert witnesses; and
 - (ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and
- (D) have successfully completed continuing education courses or other training relating to criminal defense and defense in death penalty cases;
- (E) have practiced in the area of criminal law for at least five (5) years, and during that time demonstrated that he or she has the required legal knowledge and skill necessary to provide representation in capital felonies and will apply that knowledge and skill with appropriate thoroughness and preparation;
- (F) have tried to verdict as lead counsel a significant number of felony trials, including homicide trials and other trials for offenses punishable as first or second degree felonies or capital felonies and at least one of which was a homicide case;
- (G) have tried to verdict one death penalty cases as first or second chair defense counsel;
- (H) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case; and
- (I) 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 or second degree.

ADMINISTRATIVE AND APPLICATION PROVISIONS

- (a) During the first 45 days after the adoption of these standards, all attorneys desiring inclusion on one or more lists shall apply regardless of whether the attorney is currently approved for appointment under a prior plan. Thereafter, at least twice a year, during January and July, following the submission of attorney applications for the capital felony list, the Local Selection Committee shall evaluate the new applicants for the list as well as those have applied for retention on the

list. The judges will approve for addition or retention on each list, by majority vote, those attorneys:

- (1) who meet the objective qualifications for the applicable list; and
- (2) whom the judges consider to be actually competent to adequately handle cases associated with the applicable lists; and
- (3) whom the judges believe exhibit proficiency and commitment to providing quality representation to defendants in capital cases.

(b) An attorney may be removed from a list by a majority vote of the Local Selection Committee if it determines that the attorney no longer meets the objective qualifications for that list or is not fully competent to adequately handle the category of cases associated with that list or no longer exhibits proficiency and commitment to providing quality representation to defendants or that the attorney has not complied with continuing education requirements of applicable law.

(c) Applications by attorneys for inclusion on the list as provided by Art. 26.052(d) of the Texas Code of Criminal Procedure should be submitted in writing to:

Kelly G. Moore, Presiding Judge
Ninth Administrative Judicial Region
500 W. Main, Room 204-W
Brownfield, Texas 79316

Applications will be on a form as set forth on Exhibit A attached hereto. Additional application forms or reapplication forms may be obtained by contacting Jill Kingsley, Administrative Assistant to Judge Kelly G. Moore at 806-637-1329. Incomplete applications will not be considered. The attorney may attach any supporting documentation deemed necessary.

Committee members are as follows:

1. Kelly G. Moore, Presiding Judge of the Ninth Administrative Judicial Region.
2. Jim B. Darnell, Judge of the 140th District Court.
3. Ed Self, Judge of the 242nd District Court.
4. Don R. Emerson, Judge of the 320th District Court.
5. Jeff Blackburn, Attorney at Law.
6. Jack Stoffregen, Attorney at Law.

These Standards adopted by the Local Selection Committee of the Ninth Administrative Judicial Region this 6th day of February, 2006.

Kelly G. Moore, Presiding Judge
Ninth Administrative Judicial Region

**APPLICATION TO BE INCLUDED ON THE LIST OF ATTORNEYS
QUALIFIED FOR APPOINTMENT IN CAPITAL CASES IN WHICH THE
DEATH PENALTY IS SOUGHT**

I, _____, State Bar Card Number _____, request that the Local Selection Committee include my name on the list of attorneys qualified for appointment in death penalty cases.

I am applying for the following list or lists:

- _____ Lead Counsel
- _____ Second Chair Counsel (If approved for Lead Counsel, attorney will automatically be qualified as Second Chair Counsel)
- _____ Appellate Counsel

Therefore, in compliance with the provisions of Article 26.052, Texas Code of Criminal Procedure, I swear or affirm that I have read and understand the requirements for inclusion on the list or lists selected above, and that I meet all of the standards promulgated by the Local Selection Committee for inclusion on that list.

REFERENCES

The following persons may attest to my competence in the area of criminal defense (list no less than 4 persons with name and address, including at least 2 judges who have presided over a felony jury trial in which you represented the defendant at trial or on appeal, and at least 2 defense attorneys who are familiar with your legal skills):

Signature of Affiant

Mailing Address

City/State/Zip

() _____
Office Telephone Number

() _____
Facsimile Number

Email Address

SWORN TO and subscribed to before me this _____ day of _____, 20_____.

Notary Public in and for the State of Texas

My commission expires: _____

NOTE

TO APPLICANT:

For this application to be complete, you must include:

1. A copy of your most recent Annual Verification Report from the State Bar of Texas-Minimum Continuing Legal Education Department; and
2. Your resume or professional vita, or a letter setting forth the details of your education, training and experience

**APPLICATION TO BE MAINTAINED ON THE LIST OF ATTORNEYS
QUALIFIED FOR APPOINTMENT IN CAPITAL CASES IN WHICH THE
DEATH PENALTY IS SOUGHT**

I, _____, State Bar Card Number _____, request that the Local Selection Committee maintain my name on the list of attorneys qualified for appointment in death penalty cases.

I am currently approved on the following list:

_____ Lead Counsel
_____ Second Chair Counsel
_____ Appellate Counsel

Therefore, in compliance with the provisions of Article 26.052, Texas Code of Criminal Procedure, I swear or affirm that I have read and understand the requirements for inclusion on the list or lists selected above, and that I meet all of the standards promulgated by the Local Selection Committee for inclusion on that list.

I further certify that I have successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to the defense of death penalty cases. **A copy of my most recent Annual Verification Report from the State Bar of Texas-Minimum Continuing Legal Education Department is attached.**

Signature of Affiant

Mailing Address

City/State/Zip

() _____
Office Telephone Number

()

Facsimile Number

Email Address

SWORN TO and subscribed to before me this _____ day of
_____, 20_____.

Notary Public in and for the State of Texas

My commission expires: _____

NOTE

TO APPLICANT:

For this application to be complete, you must include a copy of your most recent Annual Verification Report from the State Bar of Texas-Minimum Continuing Legal Education Department.