

NINTH ADMINISTRATIVE JUDICIAL REGION

2017 PLAN

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 composed 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 December of each off numbered year, the attorney must present proof in a form acceptable to the committee that the attorney remains qualified for inclusion on a list. 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.

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;
- (D) have successfully completed at least 30 hours of continuing education courses or other training relating to

criminal defense and defense in death penalty cases during the preceding 3-year period. No less than 20 of said hours shall specifically relate to the defense of death penalty cases in Texas;

- (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 case 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 unless the Local Selection Committee determines by a majority vote that the conduct underlying the finding of ineffective assistance 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 letters from three Texas District Court or Appellate Judges attesting to the applicant's demonstrated ability to effectively represent clients.

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 at least 30 hours of continuing education courses or other training relating to criminal defense and defense in death penalty cases during the preceding 3-year period. No less than 10 of said hours shall specifically relate to the defense of death penalty cases in Texas.
- (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 or appellate experience in:
 - (i) the use of and challenges to mental health or forensic expert witnesses; and
 - (ii) the use of mitigating evidence at the penalty phase of a death penalty trial;

- (D) have successfully completed at least 30 hours of continuing legal education courses or other training relating to criminal defense and appeals in death penalty cases during the preceding 3-year period. No less than 20 of said hours shall specifically relate to appeals of criminal cases in Texas;
- (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 appellate representation in capital felonies and will apply that knowledge and skill with appropriate thoroughness and preparation;
- (F) have authored a significant number of appellate briefs, including appellate briefs for 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 of the Code of Criminal Procedure; and
- (G) 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 unless the Local Selection Committee determines by a majority vote that the conduct underlying the finding of ineffective assistance 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 letters from three Texas District Court or Appellate Judges attesting to the applicant's demonstrated ability to effectively represent clients.

ACTION BY COMMITTEE

- (a) The Local Selection Committee shall evaluate the new applicants for the list as well as those have applied for retention on the list. The committee will approve for

addition or retention on each list, by majority vote, those attorneys:

- (1) who meet the objective qualifications for the applicable list;
 - (2) whom the committee considers to be actually competent to adequately handle cases associated with the applicable lists; and
 - (3) whom the committee believes 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 via email to:

Kelly G. Moore, Presiding Judge
Ninth Administrative Judicial Region
kgmoore@co.lubbock.tx.us

Applications will be on a form as set forth on Exhibit A attached hereto. Additional application forms or reapplication forms may be obtained by visiting the website of the Ninth Administrative Judicial Region. Incomplete applications will not be considered. The attorney may attach any supporting documentation deemed necessary.

These Standards adopted by the Local Selection Committee of the Ninth Administrative Judicial Region this 3rd day of December, 2017.

_____/s/_____
Kelly G. Moore, Presiding Judge
Ninth Administrative Judicial Region