

**PROCEDURES REGARDING ELIGIBILITY FOR APPOINTMENT OF
ATTORNEYS AS COUNSEL UNDER ARTICLE 11.071, SECTION 2(f), CODE
OF CRIMINAL PROCEDURE, AND
REGARDING THE MAINTENANCE OF A STATEWIDE LIST OF
ATTORNEYS ELIGIBLE FOR APPOINTMENT AS REQUIRED BY SECTION
78.056, GOVERNMENT CODE**

The following procedures are adopted by the Presiding Judges of the Administrative Judicial Regions (hereinafter "Regional Presiding Judges") regarding the appointment of attorneys as counsel under Article 11.071, Section 2(f), Code of Criminal Procedure:

1. The Office of Court Administration and the Texas Indigent Defense Commission shall provide administrative support to the Regional Presiding Judges to implement these procedures. References to the Office of Court Administration shall be to its Legal Division.
2. The Regional Presiding Judges will maintain a list of those attorneys eligible for appointment by the convicting court for purposes of representing an applicant on an initial application for writ of habeas corpus under Article 11.071, Code of Criminal Procedure. The list will provide the name, address, telephone number, and administrative judicial region from which an attorney will accept appointments.
3. The convicting court will appoint an attorney from the list of eligible attorneys maintained by the Regional Presiding Judges, if the Office of Capital Writs does not accept or is prohibited from accepting an appointment under Section 78.054, Government Code.
4. Those attorneys seeking to be added to the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure shall complete and submit an Application for Appointment as Counsel to the Regional Presiding Judges in care of the Office of Court Administration. The application can be obtained from the Office of Court Administration. Counsel will be notified by the Office of Court Administration of eligibility for appointment. Any attorney seeking to be removed from the list of those eligible for appointment shall make a written request to the Office of Court Administration.
5. An attorney on the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure, shall exhibit continued proficiency and commitment to providing quality representation to defendants in death-penalty cases.
6. An attorney on the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure, shall certify, on a biennial basis, that the attorney has completed a minimum of six hours of CLE devoted to the law and practice of writs of habeas corpus, with an emphasis on death-penalty cases.

7. Attorneys on the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure, have a continuing duty to report to the Office of Court Administration:
 - (a) a finding by any federal or state court of ineffective assistance of counsel during any criminal case;
 - (b) a public disciplinary action by any federal or state licensing authority;
 - (c) a contempt finding by the Court of Criminal Appeals under Article 11.071, Section 4A, Code of Criminal Procedure; or
 - (d) a sanction imposed by the Court of Criminal Appeals under that Court's Miscellaneous Rule 08-101.The attorney must notify the Office of Court Administration within 30 days of any such finding or action.
8. The Regional Presiding Judges may at any time, by majority vote, remove an attorney from the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure, if they determine that the attorney has:
 - (a) in any application for writ of habeas corpus filed in the trial court or forwarded to the Court of Criminal Appeals exhibited substandard proficiency in providing quality representation to defendants in death-penalty cases;
 - (b) been found by any federal or state court to have rendered ineffective assistance of counsel in any criminal case;
 - (c) engaged in a practice of unprofessional or unethical behavior; or
 - (d) failed to inform the Office of Court Administration of reportable actions under section 7 of these procedures.
9.
 - (a) There is no appeal from the Regional Presiding Judges' discretionary decision to remove an attorney from the list of attorneys eligible for appointment under Article 11.071, Code of Criminal Procedure. However, an attorney may request reconsideration within 15 days of receipt of the Regional Presiding Judges' removal notice.
 - (b) If an attorney is removed solely for failure to complete the required MCLE, that attorney may be reinstated on the list after providing proof of completion of the required MCLE to the Office of Court Administration and obtaining approval to be reinstated by a majority of the Regional Presiding Judges.
 - (c) If an attorney is removed from the list for any reason other than failure to complete the required MCLE, that attorney may reapply for inclusion in the list after 24 months. An attorney who reapplies under this subsection must demonstrate that the attorney's current level of proficiency, effectiveness and professionalism as defense counsel meets the required standards in all respects (*see* 7(a), (b), (c), and (d) above), and the attorney must certify that, since the time of the attorney's removal from the list, the attorney has handled at least three non-death-penalty writs of habeas corpus. The attorney shall submit copies of the materials he has filed in those cases with the Office of Court Administration.
10. The convicting court may not appoint an attorney as counsel if the attorney represented the applicant at trial or on direct appeal unless:
 - (a) the applicant and the attorney request the appointment on the record, and

(b) the convicting court finds good cause to make the appointment.

11. The list of those attorneys eligible for appointment by the convicting court shall be available from Office of Court Administration, Legal Division, P. O. Box 12066, Capitol Station, Austin, Texas, 78711 and shall be posted on the Regional Presiding Judges' website at <http://www.txcourts.gov/organizations/policy-funding/administrative-judicial-regions/>
12. Those attorneys who on December 31, 2009 are on the list of attorneys eligible for appointment maintained previously by the Court of Criminal Appeals shall automatically remain on the list.
13. These procedures become effective on January 1, 2010.

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