FIRST ADMINISTRATIVE JUDICIAL REGION OF TEXAS

STANDARDS AND RULES FOR THE QUALIFICATION OF ATTORNEYS FOR APPOINTMENT TO REPRESENT INDIGENT DEFENDANTS IN DEATH PENALTY CASES

Effective April 8, 2015

Pursuant to Article 26.052(d) of the Texas Code of Criminal Procedure, the following rules and minimum standards for the qualification of attorneys to be appointed to represent indigent defendants in death penalty cases have been adopted by the Local Selection Committee for the First Administrative Judicial Region:

A. General Rules Regarding the Appointment Of Counsel To Represent Indigent Defendants In Death Penalty Cases

1. The presiding judge of the court in which a capital felony case is filed shall appoint at least two death-penalty qualified attorneys to represent an indigent defendant, unless the State gives notice in writing that the State will not seek the death penalty. The appointment shall occur as soon as practicable after charges against the defendant have been filed.

2. One attorney shall be designated as first chair or lead trial counsel; the second attorney shall be designated as second chair trial counsel. The trial judge determines which attorney shall be designated as first chair or lead trial counsel.

3. Except for good cause, only one attorney may be appointed as lead counsel on the direct appeal of a death penalty case. The trial judge shall appoint counsel to represent an indigent defendant on appeal as soon as practicable after a death sentence is imposed in the case. The judge may not appoint an attorney as counsel on appeal if the attorney represented the defendant at trial, unless (a) the defendant and the attorney request the appointment on the record, and (b) the court finds good cause to make the appointment.

4. Any attorney appointed to represent indigent defendants in death penalty cases at trial or on appeal must be on the list of attorneys approved by the Local Selection Committee for appointment to death penalty cases in the First Administrative Judicial Region. The list of attorneys qualified for appointment to death penalty cases in the Region and this document setting the standards for inclusion on the list shall be prominently posted in each district clerk's office in the Region. The list of attorneys and these standards also will be available on the Region website at www.txcourts.gov/1ajr.aspx.

5. The trial judge shall approve compensation for appointed counsel in accordance with the fee schedule adopted in that jurisdiction.

B. Qualifications For First Chair Or Lead Trial Counsel

In accordance with Article 26.052(d)(2), an attorney appointed as first chair or lead trial counsel in the trial of a death penalty case must:

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

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

3. 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 under Article 26.052, subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

4. Have at least five (5) years of criminal law experience;

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

6. Have previous trial experience as a member of the defense counsel trial team in (a) the use of and challenges to mental health or forensic expert witnesses, and (b) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and

7. Have participated in continuing legal education courses or other training related to criminal defense in death penalty cases in each reporting period. Attorneys qualified as first chair or lead trial counsel must have completed a minimum of twelve (12) hours of death penalty related continuing legal education or training over the previous two-year period.

C. Qualifications For Second Chair Trial Counsel

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

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

2. Exhibit proficiency in criminal law and commitment to providing quality representation to defendants in felony cases;

3. 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 under Article 26.052, subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

4. Have at least two (2) years of experience in representing individuals charged with felonies; and

5. Have participated in continuing legal education courses or other training related to criminal defense in death penalty cases in each reporting period. Attorneys qualified as second chair trial counsel must have completed a minimum of eight (8) hours of death penalty related continuing legal education or training over the previous two-year period.

D. Qualifications For Lead Appellate Counsel

In accordance with Article 26.052(d)(3), an attorney appointed as lead appellate counsel in the direct appeal of a capital case must:

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

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

3. 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 under Article 26.052, subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

4. Have at least five (5) years of criminal law experience;

5. 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 Article 42.12, section 3g(a)(1) of the Texas Code of Criminal Procedure;

6. Have trial or appellate experience in (a) the use of and challenges to mental health or forensic expert witnesses, and (b) the use of mitigating evidence at the penalty phase of a death penalty trial; and

7. Have participated in continuing legal education courses or other training related to criminal defense in appealing death penalty cases. Attorneys qualified as lead appellate counsel must have completed a minimum of twelve (12) hours of death penalty related training over the previous two-year period.

E. Additional Counsel

To promote quality representation and expand and maintain a pool of qualified attorneys, nothing in these standards shall be construed to preclude the appointment of additional counsel to sit as third chair or as prohibiting *pro bono* counsel to sit as third chair with the approval of lead trial counsel and the trial judge. Attorneys sitting as third chair trial counsel shall serve under the supervision of the first and second chair trial counsel and are exempt from compliance with these standards. Appointment of additional counsel pursuant to this provision is within the discretion of the trial judge.

F. Procedures For Application

An attorney who desires to serve as court-appointed counsel in a death penalty case may apply for placement on the list by submitting a sworn application to:

Hon. Mary Murphy, Presiding Judge
First Administrative Judicial Region
133 N. Riverfront Boulevard, LB 50
Dallas, Texas 75207

Applications shall be on the form promulgated by the Local Selection Committee, which is available on the Region website at www.txcourts.gov/1ajr.aspx. The attorney may attach any supporting documentation deemed necessary, including, but not limited to, the attorney's resume or professional vita and MCLE Compliance Report from the State Bar of Texas. Incomplete applications will not be considered.

In addition to the sworn application and other documentation, attorneys applying for first chair or lead trial counsel must identify a district court judge who has knowledge of the attorney's proficiency and commitment to providing quality representation to defendants in death penalty cases.

The Local Selection Committee shall meet twice a year, at a time and place determined by the Presiding Judge, to review any submitted applications and approve an attorney's placement on the list. An applicant shall be included on the appropriate list by a vote of a majority of the members of the committee. The committee may meet on an emergency basis to review an application as deemed necessary by the Presiding Judge.

G. Attorney Obligation to Update Continuing Legal Education Documentation

In accordance with Article 26.052(d)(5), not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the Local Selection Committee that the attorney has successfully completed the minimum continuing legal education requirements for the State Bar of Texas, including completing the required hours of legal education

or other training related to the defense or appeal of death penalty cases. Such proof shall include the form entitled "Annual Attorney Certification of CLE Hours" available on the Region website at www.txcourts.gov/1ajr.aspx and a copy of the attorney's MCLE Compliance Report from the State Bar of Texas. The documentation also must detail the course name and number, the dates the attorney attended the course, and how many hours were related to the defense or appeal of death penalty cases.

The committee will accept up to two (2) hours of self-study credit. If the attorney is claiming any self-study credit, the attorney must submit documentation stating what type of self study was involved and how many hours were related to the defense of death penalty cases.

The CLE reporting period shall run from July 1 through June 30 of each year. An attorney shall submit proof of compliance with the annual certification requirement to the Presiding Judge on or before July 1 of each year. The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with such proof.

H. Periodic Review By The Local Selection Committee

Pursuant to Article 26.052(m), the Local Selection Committee shall annually review the list of attorneys to ensure that each listed attorney continues to satisfy the requirements set forth in these standards. Based on that review, the list of attorneys qualified for appointment to death penalty cases may be amended by the committee.

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

If for any reason an attorney wants to be removed from the list, the attorney shall notify the Presiding Judge of the Region in writing that the attorney no longer wishes to be available for appointment to death penalty cases.

I. Other Requirements For Qualification of Appointed Counsel

The district courts trying capital cases in the First Administrative Judicial Region may, by separate plan or order adopted by the judges of that jurisdiction, require additional qualifications for an attorney to be appointed to a capital case in their jurisdiction. Any such plan or order establishing additional requirements must be forwarded to the Presiding Judge of the Region. An attorney appointed as first chair or lead trial counsel in a capital case in which the death penalty is sought, must meet the minimum qualifications as set forth in these standards.

J. Adoption By The Local Selection Committee

The standards contained herein for the appointment of counsel to represent indigent defendants in death penalty cases were adopted by the Local Selection Committee on this 8th day of April, 2015. These standards are effective as of that date and supersede the previous standards promulgated by the committee in October 2012.

MARY MURPHY, Presiding Judge,
First Administrative Judicial Region

LOCAL SELECTION COMMITTEE MEMBERS

Pursuant to Article 26.052(c), the Presiding Judge of the First Administrative Judicial Region, as Chair, has appointed the following members of the committee:

Judge Alfonso Charles
124th Judicial District Court
Gregg County, Texas

Judge Gracie Lewis
Criminal District Court #3
Dallas County, Texas

Mr. Buck Files, Attorney
109 W. Ferguson Street
Tyler, Texas 75702

Mr. Douglas Parks, Attorney
321 Calm Water Lane
Holly Lake Ranch, Texas 75765-7145

Mr. Kerry Young, Attorney
133 N. Riverfront Boulevard, 2nd Floor
Dallas, Texas 75207