



## SEVENTH ADMINISTRATIVE JUDICIAL REGION OF TEXAS

DEAN RUCKER, PRESIDING JUDGE

MIDLAND COUNTY COURTHOUSE  
500 NORTH LORAIN STREET, SUITE 900  
MIDLAND, TEXAS 79701

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

*Effective October 1, 2011*

#### LEAD TRIAL COUNSEL

An attorney appointed as 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 criminal case nor filed documents admitting that the attorney has rendered ineffective assistance of counsel in any criminal case, unless at the request of the attorney, the Local Selection Committee determines that the conduct underlying the finding no longer accurately reflects the attorney's current ability to provide effective representation.
4. Have at least ten years experience in criminal trial or appellate litigation or board certification in criminal law for at least five years.
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 second or first degree felonies or capital felonies.
6. Have experience as counsel in at least one death penalty case that was handled to conclusion.
7. Have previous experience as a member of the defense trial counsel team in:
  - (a) the direct examination or cross-examination of mental health or forensic expert witnesses; and
  - (b) the investigation and presentation of mitigating evidence at the penalty phase of a death penalty trial.

8. Have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases.

## **SECOND CHAIR**

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 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 criminal case nor filed documents admitting that the attorney has rendered ineffective assistance of counsel in any criminal case, unless at the request of the attorney, the Local Selection Committee determines that the conduct underlying the finding no longer accurately reflects the attorney's current ability to provide effective representation.
4. Have at least five years of experience in criminal trial or appellate litigation or board certification in criminal law.
5. Have participated in continuing legal education courses or other training related to criminal defense.

## **LEAD APPELLATE COUNSEL**

An attorney appointed as lead appellate counsel in the direct appeal 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 criminal case nor filed documents admitting that the attorney has rendered ineffective assistance of counsel in any criminal case, unless at the request of the attorney, the Local Selection Committee determines that the conduct underlying the finding no longer accurately reflects the attorney's current ability to provide effective representation.
4. Have at least ten years experience in criminal trial or appellate litigation or board certification in criminal law for at least five years.

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 Section 3g(a)(1), Article 42,12, 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.
7. Have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases.

### **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 additional compensated or *pro bono* counsel who may, under the supervision of lead counsel and any 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. Attorneys applying to a court to serve in such a capacity are exempt from compliance with these standards. Appointment of additional counsel pursuant to this provision is wholly within the discretion of the trial court.

### **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 first to the local administrative district judge of the jurisdiction within which the applicant primarily practices. If the local administrative district judge certifies the applicant for inclusion on an appropriate list, the local administrative district judge shall submit the approved application to the Presiding Judge of the Seventh Administrative Judicial Region of Texas.

The Presiding Judge of the Seventh Administrative Judicial Region shall submit the name of the applicant, a copy of the applicant's application and the certification by the local administrative district judge 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.

## **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 each year. On or before December 1 of each year, an attorney placed on the list of attorneys qualified for appointment in death penalty cases must file present proof 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 specific to criminal defense in death penalty cases or in appealing death penalty cases, as applicable, within the twelve month period immediately preceding the request for recertification. Attorneys placed on the list for lead trial counsel shall be required to obtain not less than six hours of continuing legal education specific to criminal defense in death penalty cases. Attorneys placed on the list for lead appellate counsel shall be required to obtain not less than six hours of continuing legal education in the appeal of death penalty cases. Proof shall be submitted in a manner determined by the committee.

The committee shall remove the 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.

The local 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 Seventh Administrative Judicial Region, whereupon, the attorney shall be removed by the committee from any list for which the attorney no longer qualifies.