

By: Seliger

S.B. No. 528

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the standards for attorneys representing indigent
3 defendants in capital cases.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsection (d), Article 26.052, Code of Criminal
6 Procedure, as amended by Chapters 787 and 965, Acts of the 79th
7 Legislature, Regular Session, 2005, is reenacted and amended to
8 read as follows:

9 (d)(1) The committee shall adopt standards for the
10 qualification of attorneys to be appointed to represent indigent
11 defendants in capital cases in which the death penalty is sought.

12 (2) The standards must require that a trial attorney
13 appointed as lead counsel to a capital case [~~or an attorney~~
14 ~~appointed as lead appellate counsel in the direct appeal of a~~
15 ~~capital case~~]:

16 (A) be a member of the State Bar of Texas;

17 (B) exhibit proficiency and commitment to
18 providing quality representation to defendants in death penalty
19 cases;

20 (C) have not been found by a federal or state
21 court to have rendered ineffective assistance of counsel during the
22 trial or appeal of any capital case, unless the conduct underlying
23 the finding fails to accurately reflect the attorney's current
24 ability to provide effective representation;

1 (D) have at least five years of criminal law
2 experience [~~in criminal litigation~~];

3 (E) have tried to a verdict as lead defense
4 counsel a significant number of felony cases, including homicide
5 trials and other trials for offenses punishable as second or first
6 degree felonies or capital felonies;

7 (F) have trial experience in:

8 (i) the use of and challenges to mental
9 health or forensic expert witnesses; and

10 (ii) investigating and presenting
11 mitigating evidence at the penalty phase of a death penalty trial;
12 and

13 (G) have participated in continuing legal
14 education courses or other training relating to criminal defense in
15 death penalty cases.

16 (3) The standards must require that an attorney
17 appointed as lead appellate counsel in the direct appeal of a
18 capital case:

19 (A) be a member of the State Bar of Texas;

20 (B) exhibit proficiency and commitment to
21 providing quality representation to defendants in death penalty
22 cases;

23 (C) have not been found by a federal or state
24 court to have rendered ineffective assistance of counsel during the
25 trial or appeal of any capital case, unless the conduct underlying
26 the finding fails to accurately reflect the attorney's current
27 ability to provide effective representation;

1 (D) have at least five years of criminal law
2 experience;

3 (E) have authored a significant number of
4 appellate briefs, including appellate briefs for homicide cases and
5 other cases involving an offense punishable as a capital felony or a
6 felony of the first degree or an offense described by Section
7 3g(a)(1), Article 42.12;

8 (F) have trial or appellate experience in:

9 (i) the use of and challenges to mental
10 health or forensic expert witnesses; and

11 (ii) the use of mitigating evidence at the
12 penalty phase of a death penalty trial; and

13 (G) have participated in continuing legal
14 education courses or other training relating to criminal defense in
15 appealing death penalty cases.

16 (4) The committee shall prominently post the standards
17 in each district clerk's office in the region with a list of
18 attorneys qualified for appointment.

19 (5) [~~4~~] Not later than the second anniversary of the
20 date an attorney is placed on the list of attorneys qualified for
21 appointment in death penalty cases and each year following the
22 second anniversary, the attorney must present proof to the
23 committee that the attorney has successfully completed the minimum
24 continuing legal education requirements of the State Bar of Texas,
25 including a course or other form of training relating to criminal
26 [the] defense in [of] death penalty cases or in appealing death
27 penalty cases, as applicable. The committee shall remove the

1 attorney's name from the list of qualified attorneys if the
2 attorney fails to provide the committee with proof of completion of
3 the continuing legal education requirements.

4 SECTION 2. A local selection committee shall amend
5 standards previously adopted by the committee to conform with the
6 requirements of Subsection (d), Article 26.052, Code of Criminal
7 Procedure, as amended by this Act, not later than the 75th day after
8 the effective date of this Act. An attorney appointed to a death
9 penalty case on or after the 75th day after the effective date of
10 this Act must meet the standards adopted in conformity with amended
11 Subsection (d), Article 26.052, Code of Criminal Procedure. An
12 attorney appointed to a death penalty case before the 75th day after
13 the effective date of this Act is covered by the law in effect when
14 the attorney was appointed, and the former law is continued in
15 effect for that purpose.

16 SECTION 3. This Act takes effect September 1, 2007.