

BILL ANALYSIS

Senate Research Center
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H.B. 2058
By: Gallego et al. (Seliger)
Jurisprudence
4/27/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law specifies qualifications for trial attorneys and puts appellate attorneys in the same category, despite the difference in experience between trial attorneys and appellate attorneys. Many attorneys who have extensive appellate experience from representing indigent defendants in capital cases are disqualified from such cases because those lawyers do not meet qualification standards specific to trial lawyers. This legislation would ensure the greater specialization of attorneys representing indigent defendants in death penalty appeal cases.

H.B. 2058 amends current law relating to the standards for attorneys representing indigent defendants in capital cases.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts Article 26.052(d), Code of Criminal Procedure, as amended by Chapters 787 (S.B. 60) and 965 (H.B. 1701), Acts of the 79th Legislature, Regular Session, 2005, and amends it as follows:

- (d)(1) Makes no changes to this subdivision.
- (2) Requires that the standards require that a trial attorney appointed as lead counsel to a capital case, rather than a trial attorney appointed as lead counsel to a capital case or an attorney appointed as lead appellate counsel in the direct appeal of a capital case, have at least five years of criminal law experience, rather than experience in criminal litigation.
- (3) Requires that the standards require that an attorney appointed as lead appellate counsel in the direct appeal of a capital case be a member of the State Bar of Texas; exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases; 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; have at least five years of criminal law experience; 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 first degree or an offense described by Section 3g(a)(1) (relating to the provisions of Section 3 of this article do not apply to a defendant adjudged guilty of an offense under certain statutes), Article 42.12 (Community Supervision); have trial or appellate experience in the use of and challenges to mental health or forensic expert witnesses and the use of mitigating evidence at the penalty phase of a death penalty trial; and have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases.
- (4) Creates this subdivision from existing text.

(5) Redesignates Subdivision (4) as Subdivision (5). Requires the attorney, not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty case and each year following the second anniversary, to 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 relating to criminal defense in, rather than the defense of, death penalty cases or in appealing death penalty cases, as applicable.

SECTION 2. Requires a local selection committee to amend its standards as necessary to conform with the requirements of Article 26.052(d), Code of Criminal Procedure, as amended by this Act, not later than the 75th day after the effective date of this Act. Requires an attorney appointed to a death penalty case on or after the 75th day after the effective date of this Act to meet the standards adopted in conformity with amended Article 26.052(d), Code of Criminal Procedure. Provides that an attorney appointed to a death penalty case before the 75th day after the effective date of this Act is covered by the law in effect when the attorney was appointed, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: September 1, 2009.