

By: Gallego

H.B. No. 2058

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. 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, is reenacted and amended to read as follows:

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

(2) The standards must require that 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]~~:

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

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

(C) 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;

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

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

5 (F) have trial experience in:

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

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

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

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

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

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

21 (C) have not been found by a federal or state
22 court to have rendered ineffective assistance of counsel during the
23 trial or appeal of any capital case;

24 (D) have at least five years of criminal law
25 experience;

26 (E) have authored a significant number of
27 appellate briefs, including appellate briefs for homicide cases and

1 other cases involving an offense punishable as a capital felony or a
2 felony of the first degree or an offense described by Section
3 3g(a)(1), Article 42.12;

4 (F) have trial or appellate experience in:

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

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

9 (G) have participated in continuing legal
10 education courses or other training relating to criminal defense in
11 appealing death penalty cases.

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

15 (5) [~~4~~] Not later than the second anniversary of the
16 date an attorney is placed on the list of attorneys qualified for
17 appointment in death penalty cases and each year following the
18 second anniversary, the attorney must present proof to the
19 committee that the attorney has successfully completed the minimum
20 continuing legal education requirements of the State Bar of Texas,
21 including a course or other form of training relating to criminal
22 [the] defense in [of] death penalty cases or in appealing death
23 penalty cases, as applicable. The committee shall remove the
24 attorney's name from the list of qualified attorneys if the
25 attorney fails to provide the committee with proof of completion of
26 the continuing legal education requirements.

27 SECTION 2. A local selection committee shall amend its

1 standards as necessary to conform with the requirements of Article
2 26.052(d), Code of Criminal Procedure, as amended by this Act, not
3 later than the 75th day after the effective date of this Act. An
4 attorney appointed to a death penalty case on or after the 75th day
5 after the effective date of this Act must meet the standards adopted
6 in conformity with amended Article 26.052(d), Code of Criminal
7 Procedure. An attorney appointed to a death penalty case before the
8 75th day after the effective date of this Act is covered by the law
9 in effect when the attorney was appointed, and the former law is
10 continued in effect for that purpose.

11 SECTION 3. This Act takes effect September 1, 2009.