

1-1 By: Seliger S.B. No. 1130
1-2 (In the Senate - Filed February 25, 2009; March 13, 2009,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 April 6, 2009, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; April 6, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the standards for attorneys representing indigent
1-9 defendants in capital cases.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (d), Article 26.052, Code of Criminal
1-12 Procedure, as amended by Chapters 787 (S.B. 60) and 965 (H.B. 1701),
1-13 Acts of the 79th Legislature, Regular Session, 2005, is reenacted
1-14 and amended to read as follows:

1-15 (d)(1) The committee shall adopt standards for the
1-16 qualification of attorneys to be appointed to represent indigent
1-17 defendants in capital cases in which the death penalty is sought.

1-18 (2) The standards must require that a trial attorney
1-19 appointed as lead counsel to a capital case [~~or an attorney~~
1-20 ~~appointed as lead appellate counsel in the direct appeal of a~~
1-21 ~~capital case~~]:

1-22 (A) be a member of the State Bar of Texas;

1-23 (B) exhibit proficiency and commitment to
1-24 providing quality representation to defendants in death penalty
1-25 cases;

1-26 (C) have not been found by a federal or state
1-27 court to have rendered ineffective assistance of counsel during the
1-28 trial or appeal of any capital case;

1-29 (D) have at least five years of criminal law
1-30 experience [~~in criminal litigation~~];

1-31 (E) have tried to a verdict as lead defense
1-32 counsel a significant number of felony cases, including homicide
1-33 trials and other trials for offenses punishable as second or first
1-34 degree felonies or capital felonies;

1-35 (F) have trial experience in:

1-36 (i) the use of and challenges to mental
1-37 health or forensic expert witnesses; and

1-38 (ii) investigating and presenting
1-39 mitigating evidence at the penalty phase of a death penalty trial;
1-40 and

1-41 (G) have participated in continuing legal
1-42 education courses or other training relating to criminal defense in
1-43 death penalty cases.

1-44 (3) The standards must require that an attorney
1-45 appointed as lead appellate counsel in the direct appeal of a
1-46 capital case:

1-47 (A) be a member of the State Bar of Texas;

1-48 (B) exhibit proficiency and commitment to
1-49 providing quality representation to defendants in death penalty
1-50 cases;

1-51 (C) have not been found by a federal or state
1-52 court to have rendered ineffective assistance of counsel during the
1-53 trial or appeal of any capital case;

1-54 (D) have at least five years of criminal law
1-55 experience;

1-56 (E) have authored a significant number of
1-57 appellate briefs, including appellate briefs for homicide cases and
1-58 other cases involving an offense punishable as a capital felony or a
1-59 felony of the first degree or an offense described by Section
1-60 3g(a)(1), Article 42.12;

1-61 (F) have trial or appellate experience in:

1-62 (i) the use of and challenges to mental
1-63 health or forensic expert witnesses; and

1-64 (ii) the use of mitigating evidence at the

2-1 penalty phase of a death penalty trial; and
2-2 (G) have participated in continuing legal
2-3 education courses or other training relating to criminal defense in
2-4 appealing death penalty cases.

2-5 (4) The committee shall prominently post the standards
2-6 in each district clerk's office in the region with a list of
2-7 attorneys qualified for appointment.

2-8 (5) [~~4~~] Not later than the second anniversary of the
2-9 date an attorney is placed on the list of attorneys qualified for
2-10 appointment in death penalty cases and each year following the
2-11 second anniversary, the attorney must present proof to the
2-12 committee that the attorney has successfully completed the minimum
2-13 continuing legal education requirements of the State Bar of Texas,
2-14 including a course or other form of training relating to criminal
2-15 [the] defense in [of] death penalty cases or in appealing death
2-16 penalty cases, as applicable. The committee shall remove the
2-17 attorney's name from the list of qualified attorneys if the
2-18 attorney fails to provide the committee with proof of completion of
2-19 the continuing legal education requirements.

2-20 SECTION 2. A local selection committee shall amend its
2-21 standards as necessary to conform with the requirements of
2-22 Subsection (d), Article 26.052, Code of Criminal Procedure, as
2-23 amended by this Act, not later than the 75th day after the effective
2-24 date of this Act. An attorney appointed to a death penalty case on
2-25 or after the 75th day after the effective date of this Act must meet
2-26 the standards adopted in conformity with amended Subsection (d),
2-27 Article 26.052, Code of Criminal Procedure. An attorney appointed
2-28 to a death penalty case before the 75th day after the effective date
2-29 of this Act is covered by the law in effect when the attorney was
2-30 appointed, and the former law is continued in effect for that
2-31 purpose.

2-32 SECTION 3. This Act takes effect September 1, 2009.

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