

By: Seliger S.B. No. 1308  
(McClendon, Gallego, Rodriguez, Hartnett, Zedler)

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. Article 26.052, Code of Criminal Procedure, is  
6 amended by amending Subsection (d) and adding Subsection (n) to  
7 read as follows:

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

11 (2) The standards must require that a trial attorney  
12 appointed as lead counsel to a capital case:

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

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

17 (C) have not been found by a federal or state  
18 court to have rendered ineffective assistance of counsel during the  
19 trial or appeal of any capital case, unless the local selection  
20 committee determines under Subsection (n) that the conduct  
21 underlying the finding no longer accurately reflects the attorney's  
22 ability to provide effective representation;

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

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, unless the local selection  
24 committee determines under Subsection (n) that the conduct  
25 underlying the finding no longer accurately reflects the attorney's  
26 ability to provide effective representation;

27 (D) have at least five years of criminal law

1 experience;

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

7 (F) have trial or appellate experience in:

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

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

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

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

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

1 committee with proof of completion of the continuing legal  
2 education requirements.

3 (n) At the request of an attorney, the local selection  
4 committee shall make a determination under Subsection (d)(2)(C) or  
5 (3)(C), as applicable, regarding an attorney's current ability to  
6 provide effective representation following a judicial finding that  
7 the attorney previously rendered ineffective assistance of counsel  
8 in a capital case.

9 SECTION 2. The change in law made by this Act applies to an  
10 attorney who, before, on, or after the effective date of this Act,  
11 has been found by a federal or state court to have rendered  
12 ineffective assistance of counsel during the trial or appeal of a  
13 capital case.

14 SECTION 3. A local selection committee shall amend its  
15 standards as necessary to conform with the requirements of  
16 Subsection (n), Article 26.052, Code of Criminal Procedure, as  
17 added by this Act, not later than the 30th day after the effective  
18 date of this Act.

19 SECTION 4. This Act takes effect September 1, 2011.