

1-1 By: Seliger S.B. No. 1308  
1-2 (In the Senate - Filed March 8, 2011; March 16, 2011, read  
1-3 first time and referred to Committee on Jurisprudence;  
1-4 March 30, 2011, reported favorably by the following vote: Yeas 7,  
1-5 Nays 0; March 30, 2011, 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. Article 26.052, Code of Criminal Procedure, is  
1-12 amended by amending Subsection (d) and adding Subsection (n) to  
1-13 read as follows:

1-14 (d)(1) The committee shall adopt standards for the  
1-15 qualification of attorneys to be appointed to represent indigent  
1-16 defendants in capital cases in which the death penalty is sought.

1-17 (2) The standards must require that a trial attorney  
1-18 appointed as lead counsel to a capital case:

1-19 (A) be a member of the State Bar of Texas;

1-20 (B) exhibit proficiency and commitment to  
1-21 providing quality representation to defendants in death penalty  
1-22 cases;

1-23 (C) have not been found by a federal or state  
1-24 court to have rendered ineffective assistance of counsel during the  
1-25 trial or appeal of any capital case, unless the local selection  
1-26 committee determines under Subsection (n) that the conduct  
1-27 underlying the finding no longer accurately reflects the attorney's  
1-28 ability to provide effective representation;

1-29 (D) have at least five years of criminal law  
1-30 experience;

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, unless the local selection  
1-54 committee determines under Subsection (n) that the conduct  
1-55 underlying the finding no longer accurately reflects the attorney's  
1-56 ability to provide effective representation;

1-57 (D) have at least five years of criminal law  
1-58 experience;

1-59 (E) have authored a significant number of  
1-60 appellate briefs, including appellate briefs for homicide cases and  
1-61 other cases involving an offense punishable as a capital felony or a  
1-62 felony of the first degree or an offense described by Section  
1-63 3g(a)(1), Article 42.12;

1-64 (F) have trial or appellate experience in:

2-1 (i) the use of and challenges to mental  
2-2 health or forensic expert witnesses; and

2-3 (ii) the use of mitigating evidence at the  
2-4 penalty phase of a death penalty trial; and

2-5 (G) have participated in continuing legal  
2-6 education courses or other training relating to criminal defense in  
2-7 appealing death penalty cases.

2-8 (4) The committee shall prominently post the standards  
2-9 in each district clerk's office in the region with a list of  
2-10 attorneys qualified for appointment.

2-11 (5) Not later than the second anniversary of the date  
2-12 an attorney is placed on the list of attorneys qualified for  
2-13 appointment in death penalty cases and each year following the  
2-14 second anniversary, the attorney must present proof to the  
2-15 committee that the attorney has successfully completed the minimum  
2-16 continuing legal education requirements of the State Bar of Texas,  
2-17 including a course or other form of training relating to criminal  
2-18 defense in death penalty cases or in appealing death penalty cases,  
2-19 as applicable. The committee shall remove the attorney's name from  
2-20 the list of qualified attorneys if the attorney fails to provide the  
2-21 committee with proof of completion of the continuing legal  
2-22 education requirements.

2-23 (n) At the request of an attorney, the local selection  
2-24 committee shall make a determination under Subsection (d)(2)(C) or  
2-25 (3)(C), as applicable, regarding an attorney's current ability to  
2-26 provide effective representation following a judicial finding that  
2-27 the attorney previously rendered ineffective assistance of counsel  
2-28 in a capital case.

2-29 SECTION 2. The change in law made by this Act applies to an  
2-30 attorney who, before, on, or after the effective date of this Act,  
2-31 has been found by a federal or state court to have rendered  
2-32 ineffective assistance of counsel during the trial or appeal of a  
2-33 capital case.

2-34 SECTION 3. A local selection committee shall amend its  
2-35 standards as necessary to conform with the requirements of  
2-36 Subsection (n), Article 26.052, Code of Criminal Procedure, as  
2-37 added by this Act, not later than the 30th day after the effective  
2-38 date of this Act.

2-39 SECTION 4. This Act takes effect September 1, 2011.

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