86R511 MEW-F

By:  Gervin-Hawkins H.B. No. 221

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1.  Articles 26.052(d)(2) and (3), Code of Criminal Procedure, are amended to read as follows:

(2)  The standards must require that a trial attorney appointed as lead counsel to 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, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

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

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

(F)  have trial experience in[~~:~~

[~~(i)~~]  the use of and challenges to mental health or forensic expert witnesses[~~;~~] and have:

(i)  trial experience in [~~(ii)~~] investigating and presenting mitigating evidence at the penalty phase of a death penalty trial, regardless of whether:

(a)  the case resulted in a judgment or dismissal; or

(b)  the state subsequently waived the death penalty in the case; or

(ii)  an equivalent amount of trial experience, as determined by the local selection committee; and

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

(3)  The standards must require that 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, unless the local selection committee determines under Subsection (n) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

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

(E)  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 the first degree or an offense described by Article 42A.054(a);

(F)  have trial or appellate experience in[~~:~~

[~~(i)~~]  the use of and challenges to mental health or forensic expert witnesses[~~;~~] and have:

(i)  trial or appellate experience in [~~(ii)~~] the use of mitigating evidence at the penalty phase of a death penalty trial, regardless of whether:

(a)  the case resulted in a judgment or dismissal; or

(b)  the state subsequently waived the death penalty in the case; or

(ii)  an equivalent amount of trial or appellate experience, as determined by the local selection committee; and

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

SECTION 2.  The change in law made by this Act applies only to a capital felony case that is filed on or after the effective date of this Act. A capital felony case that is filed before the effective date of this Act is governed by the law in effect on the date the case was filed, and the former law is continued in effect for that purpose.

SECTION 3.  This Act takes effect September 1, 2019.