

STATE OF TEXAS

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FIRST ADMINISTRATIVE JUDICIAL REGION

**STANDARDS FOR APPOINTMENT OF COUNSEL IN DEATH PENALTY
CASES PROMULGATED PURSUANT TO ART. 26.052 C.C.P.**

The local selection committee, appointed by the Presiding Judge of the First Administrative Judicial Region of Texas pursuant to Article 26.052 of the Code of Criminal Procedure, has adopted the following minimum standards and qualifications for attorneys to be appointed to death penalty cases in the First Administrative Judicial Region:

- At least two attorneys shall be appointed for trial. One designated as first chair, or lead attorney, the other as second chair;
- The first and second chair attorneys must be members of the State Bar of Texas;
- The first chair attorney must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases. The first chair must have at least five years criminal law experience;
- The first chair attorney must 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 first or second degree felonies, or capital felonies;
- The first chair attorney must have trial experience in the use of and challenge to mental health or forensic expert witnesses, and in investigating and presenting mitigating evidence at the penalty stage of a death penalty trial;
- The first chair attorney must have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases each reporting period and must have completed a minimum of twelve hours of such training over the previous two year period; and
- First chair trial counsel must not have been found by any federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case.

- The second chair attorney must have at least two years experience in representing individuals charged with felony matters; and
- The second chair attorney must have completed a minimum of eight hours of continuing legal education courses or other training relating to criminal defense in death penalty cases over the previous two year period.
- Lead appellate counsel appointed on the direct appeal of a death penalty case must be a member of the State Bar of Texas;
- Lead appellate counsel must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
- Lead appellate counsel must not have been found by any federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case;
- Lead appellate counsel must have at least five years criminal law experience;
- Lead appellate counsel must have authored a significant number of appellate briefs, including homicide cases and other cases involving an offense punishable as a capital felony or a felony of the first degree or and offense described by Section 3g(a)(1) of Article 42.12 of the Texas Code of Criminal Procedure;
- Lead appellate counsel must have trial or appellate experience in the use of and challenge to mental health or forensic expert witnesses, and the use of mitigating evidence at the penalty stage of a death penalty trial; and
- Lead appellate counsel must have participated in continuing legal education courses or other training relating to criminal defense in appealing death penalty cases each reporting period and must have completed a minimum of twelve hours of such training over the previous two year period.

Nothing in this plan shall be construed as prohibiting the appointment of additional counsel to sit third chair or as prohibiting *pro bono* counsel to sit as third chair with the approval of lead counsel and the trial court judge. Attorneys sitting as third chair counsel shall serve under the supervision of the first and second chair counsel and are exempt from complying with the qualification requirements of this plan.

Attorneys may apply for placement on the master list of attorneys eligible for appointment by submitting their sworn application to :

John Ovard, Presiding Judge
First Administrative Judicial Region
133 N. Industrial Blvd. - LB 50
Dallas, TX 75207

Applications shall be on the form approved by the local selection committee and may be obtained by contacting Judge Ovard's office. Attorneys applying for first chair trial counsel must submit a letter from a district court judge attesting to the applicant's proficiency and commitment to providing quality representation to defendants in death penalty cases along with the application form. The local selection committee shall meet as necessary, as determined by the presiding judge, to review the applications.

Attorneys placed on the master list must annually submit to the local selection committee, through Judge Ovard's office, proof that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas and has completed the required hours of training relating to the defense or appeal of death penalty cases. The name of any attorney failing to provide proof of completion of the continuing legal education requirements to the local selection committee shall be removed from the master list of eligible attorneys. Proof of CLE shall be submitted July of each year. The local selection committee shall then meet at a time set by the Presiding Judge of the First Administrative Judicial Region to ensure that each attorney listed on the master list of eligible attorneys satisfies the requirements set forth in this order.

The judge of the court in which a capital felony case is filed shall appoint counsel to represent an indigent defendant as soon as practicable after charges are filed. The lead counsel and second chair attorney must be from the master list of attorneys eligible for appointment to death penalty cases unless the State gives notice in writing that the State will not seek the death penalty. The judge trying the case shall compensate appointed counsel in accordance with the fee schedule adopted in that jurisdiction.


The Judge of the Court in which the case is pending shall determine which attorneys from the approved list are to be appointed, and shall decide which attorney shall be designated as first chair or lead attorney. The Judge appointing counsel shall ensure that the attorney designated as first chair or lead attorney meets the qualifications for first chair or lead attorneys set forth herein. Lead appellate counsel appointed on direct appeal must meet the standards for lead appellate counsel set forth herein.

The master list of attorneys qualified for appointment to death penalty cases in the First Administrative Judicial Region and this order setting standards shall be prominently posted in each district clerk's office in the Administrative Region. The list of attorneys eligible for appointment may be amended periodically by the local selection committee.

The district courts trying capital cases in the Region may, by separate plan adopted by the judges, require additional qualifications for an attorney to be appointed to a capital case in their jurisdiction. Any such plan shall be forwarded to the Presiding Judge of the Region upon its adoption. An attorney appointed as first chair in a capital case where death is sought must meet the minimum qualifications set forth in this plan.

The requirements for lead appellate counsel are effective the 75th day after September 1, 2009. Attorneys appointed as lead appellate counsel prior to that date are covered by the former requirements which were the same as the qualifications for lead trial counsel.

SIGNED this 13th day of November, 2009.



JOHN OVARD, PRESIDING JUDGE
FIRST ADMINISTRATIVE JUDICIAL REGION