

**SECOND AMENDED
STANDARDS FOR THE QUALIFICATION OF ATTORNEYS FOR APPOINTMENT
TO DEATH PENALTY CASES IN THE EIGHTH ADMINISTRATIVE JUDICIAL REGION
OF TEXAS PURSUANT TO ARTICLE 26.052 OF THE TEXAS CODE OF CRIMINAL PROCEDURE**

Pursuant to the requirements of Article 26.052 of the Texas Code of Criminal Procedure, a minimum of two (2) attorneys, designated as lead counsel and as second chair, are to be appointed as trial counsel as soon as practicable after charges are filed in death penalty cases, from the List of Attorneys Qualified for Appointment to Death Penalty Cases in the Eighth Administrative Judicial Region of Texas, which shall be compiled pursuant to these Standards, unless the State gives notice in writing that the State will not seek the death penalty.

To be qualified for appointment as trial counsel, as appellate counsel, or as counsel on application for a writ of certiorari in the United States Supreme Court in death penalty cases, an attorney must possess the following qualifications:

1. Counsel must be a member in good standing of the State Bar of Texas.
2. Counsel must be familiar with the Texas Penal Code; the Texas Code of Criminal Procedure; the State Bar of Texas Guidelines and Standards for Texas Capital Counsel; and the local rules of practice for the criminal courts in the jurisdiction within the Eighth Administrative Judicial Region where the case is pending.
3. Counsel must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases, consistent with the requirements of the State and federal constitutions; the State statutes; and the State Bar of Texas Guidelines and Standards for Texas Capital Counsel; further, Counsel must have not been found by any 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 (15) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation.
4. For appointment as lead trial counsel in a death penalty case, counsel must have a minimum of ten (10) years experience in the litigation of serious and complex criminal cases, including homicide trials. To be appointed as lead trial counsel, Counsel shall have previously tried to verdict, as lead defense counsel, at least fifteen (15) felony cases, at least ten (10) of which must have been for offenses enumerated in Tex. Code Crim. Pro. Art. 42A.054. For appointment as lead trial counsel, Counsel must also have prior trial experience in the use of, and challenges to, mental health and forensic expert witnesses; in investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and Counsel must have previously served as defense counsel in, or have presided over, at least one (1) prior death penalty case that was tried to a verdict. In lieu of the above qualifications for appointment as lead trial counsel in a death penalty case, counsel must be board certified in criminal law by the Texas Board of Legal Specialization and counsel must have tried or presided over at least ten (10) death penalty cases that were tried to a verdict. Any attorney approved to serve as lead trial counsel under these Standards may be appointed to serve as either lead counsel, or as second chair trial counsel, at the discretion of the appointing authority in the particular case.
5. For appointment as second chair trial counsel, Counsel must have a minimum of seven (7) years experience in the litigation of serious and complex criminal cases, including homicide trials, or be Board Certified in Criminal Law by the Texas Board of Legal Specialization. To be appointed as second chair trial counsel, Counsel shall have previously tried to verdict at least ten (10) felony cases, at least

five (5) of which must have been for offenses enumerated in Art. 42.12, Section 3g, Tex. Code Crim. Proc. For appointment as second chair trial counsel, prior death penalty experience is not required, but it is strongly recommended.

6. For appointment as appellate counsel, Counsel must have a minimum of ten (10) years experience in the trial, direct appeal, and/or post-conviction proceedings in serious and complex criminal cases, including homicide cases. To be appointed as appellate counsel, Counsel shall have previously tried to verdict, appealed upon direct appeal, or served as defense counsel in post-conviction habeas proceedings, in at least fifteen (15) felony cases which were tried to verdict, at least ten (10) of which must have been for offenses enumerated in Art. 42.12, Section 3g, Tex. Code Crim. Proc. For appointment as appellate counsel, Counsel shall 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 Section 3g(a)(1), of Article 42.12 of the Texas Code of Criminal Procedure. Counsel shall also have trial or appellate experience in the use of, and challenges to, mental health and forensic expert witnesses; the use of mitigating evidence at the penalty phase of a death penalty trial; and have participated in continuing legal education courses or other training relating specifically to criminal defense in appealing death penalty cases.
7. For appointment as appellate counsel, Counsel must have previously served as defense trial counsel, as appellate counsel, or as post-conviction habeas counsel, in at least one prior death penalty case that was tried to verdict.
8. Counsel must have significant and continuous training in the field of criminal law, and in the specific area of death penalty defense; and Counsel must participate in a minimum of ten (10) hours each year of continuing legal education courses or other training related directly to the defense of death penalty cases (including death penalty appeals and/or death penalty habeas proceedings).
9. At the time of original application, and by September 1st of each year thereafter, the Applicant shall submit an application for certification or recertification on the form approved by the Committee promulgating these Standards, showing compliance with the following requirements:
 - a) Compliance with the State Bar of Texas Minimum Educational Requirements¹ for the applicant's MCLE Compliance Year² preceding the original application or application for recertification. Each application for certification or recertification must have attached thereto a copy of the Applicant's State Bar of Texas Continuing Legal Education Annual Reporting Form which reflects compliance Minimum Educational Requirements. (A printout is available from the State Bar website)
 - b) Completion of at least ten (10) hours of Accredited CLE³ during the year preceding the original application for certification or recertification in the specific area of death penalty litigation (including death penalty appeals and/or death penalty habeas litigation). Every application for certification and recertification will include an Attendance Report for the year preceding the application from the State Bar of Texas MCLE Department reflecting completion of ten (10) hours of Accredited CLE in the specific area of death penalty litigation in the year preceding the application. (A printout is available from the State Bar website).

¹ See Texas MCLE Regulations ¶ 3.0 Minimum Educational Requirements.

² See Texas MCLE Regulations ¶ 1.0 MCLE Compliance Year.

³ See Texas MCLE Regulations ¶ 2.0 et. seq. The definitions of Accredited CLE and Self Study are found at ¶ 2.1 and ¶ 2.2 of the Texas MCE Regulations. Self-Study is not accepted for the minimum ten (10) hours of Accredited CLE in the specific area of death penalty litigation.

c) That there has been no finding by any State Bar of Texas grievance committee, disciplinary tribunal, or court, that the Applicant has violated any of the Texas Rules of Disciplinary Conduct; nor has there been any finding by any court of the Applicant having rendered ineffective assistance in any criminal matter; unless the local selection committee determines under subsection (15) that the conduct underlying the finding no longer accurately reflects the attorney's ability to provide effective representation;

d) The inclusion of a listing of all felony cases charging any offense enumerated in Art. 42.12, Section 3g, Tex. Code Crim. Proc., in which the Applicant served as trial counsel and which were tried during the past year; or in which Counsel served as appellate counsel, and wherein the appellate brief was filed during the past year; or in post-conviction habeas proceedings in which Counsel has served as post-conviction habeas counsel, and which were decided within the past year; together with the court where the case was heard, the judge presiding, the cause number, the style of the case, the names of opposing counsel, and the final verdict rendered in the trial, or the final disposition entered in the appeal or the post-conviction habeas corpus proceeding held in the case.

10. Attorneys certified to serve as lead trial counsel, second chair trial counsel, or appellate counsel for death penalty appeals, must provide the Committee with the aforesaid documents on an annual basis, by September 1st of each year, in order to be considered for recertification and inclusion upon the list of qualified attorneys certified by the Committee beginning on January 1st, of each year.
12. Failure to comply with any of these requirements may result in the attorney losing his certification for appointment in death penalty cases by this Committee, and in his possible removal from all pending death penalty cases (at the discretion of the appointing authority) in which Counsel has been appointed.
13. Any attorney who has served as trial counsel in a death penalty case may not be appointed as appellate counsel, or as post-conviction habeas counsel in that case, unless both the defendant and the attorney request the appointment on the record, and the Court finds that good cause exists to make the appointment.
14. At the request of an attorney, the local selection committee shall make a determination under Subsection (3) or (10) (c), as applicable, regarding an attorney's current ability to provide effective representation following a judicial finding that the attorney previously rendered ineffective assistance of counsel in a capital case.

The local selection committee for this administrative judicial region shall annually review those attorneys listed upon the list of attorneys approved for appointment to death penalty cases within the Eighth Administrative Judicial Region of Texas, in order to insure that all such attorneys listed therein satisfy the requirements of Texas Code of Crim. Proc., Article 26.052, and these Standards; and to insure that such attorneys exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases consistent with the State and federal constitutions, the State statutes, and the State Bar of Texas Guidelines and Standards for Texas Capital Counsel, by demonstrating a substantial knowledge of procedural and substantive law; skill in management of complex negotiations and litigation; skill in oral advocacy and legal research; skill in investigation of mental status; skill in the use of a mitigation specialist and other experts, and familiarity with the common areas of forensic investigation; skill in trial advocacy and in the presentation of mitigation and mental health testimony; maintenance of a manageable workload which

enables high-quality representation to be provided to each client; and skill in the assembly and management of a capital defense team which includes all expert, investigative or other professional services reasonably necessary for an adequate preparation of the defense in a death penalty case.

The foregoing Standards are the minimum qualifications necessary for appointment as counsel in death penalty cases throughout the Eighth Administrative Judicial Region of Texas, and only those attorneys satisfying the Standards set out herein, and included upon the list of approved counsel certified for appointment in death penalty cases promulgated by this Committee, may be appointed to any death penalty case, appeal, pending in any county or judicial district within the Eighth Administrative Judicial Region of Texas. A copy of these Standards, together with the List of Attorneys Qualified for Appointment in Death Penalty Cases in the Eighth Administrative Judicial Region of Texas compiled under these Standards, are to be prominently posted in each District Clerk's office within this administrative region.

On May 18, 2023 the Local Selection Committee of the Eighth Administrative Judicial Region (aka Death Penalty Committee) formed pursuant to Texas Code of Criminal Procedure Article 26.052 and consisting of Judge David L. Evans, Presiding Judge of the Eighth Administrative Judicial Region; Judge Elizabeth Beach Judge of Criminal District Court No. 1 of Tarrant County; Judge George Gallagher, Judge of the 396th District Court of Tarrant County; Judge Jason Cashon, Judge of the 266th District Court of Erath County; Mr. Tim Moore of Fort Worth and Mr. Bob Gill of Fort Worth unanimously adopted and promulgated these Second Amended Standards.



David L. Evans
Presiding Judge, Eight Administrative Judicial Region
100 N. Calhoun 2nd Floor
Fort Worth TX, 76196

NOTICE

Attorneys seeking inclusion on the List of Attorneys Qualified for Appointment to Death Penalty Cases in the Eighth Administrative Judicial Region of Texas, shall submit their application to the Hon. David L. Evans, Presiding Judge of the Eighth Administrative Judicial Region of Texas, on the form provided for such application, as lead counsel, as second chair, as appellate counsel, and/or as post-conviction habeas counsel, by September 1st of each year. The Committee shall certify the Applicant for inclusion upon the list for appointment as counsel in death penalty cases in those positions for which the Committee believes the Applicant to be qualified under these Standards.