

LOUISIANA STANDARDS ON INDIGENT DEFENSE

CHAPTER 7

STANDARDS RELATING TO THE PROVISION OF COUNSEL TO INDIGENTS ACCUSED OF CAPITAL CRIMES

Purpose and Scope of Standards. The following standards are designed to ensure that the constitutional right to the effective representation by counsel is provided to indigent persons accused of capital crimes. The certification process described herein is designed to provide for a systematic and publicized method for distributing assignments in capital cases as widely as possible among qualified members of the bar and providing for the largest possible pool of certified counsel.

These standards address principles of eligibility and certification of trial and appellate counsel involved in the defense of indigent clients accused of capital crimes, including educational requirements, workload standards, and support.

Part I. General Principles of Certification Eligibility. The following standards shall be applied to attorney certification under any part of this chapter:

Standard 7-1.1. Eligibility. The attorney shall be familiar with the practice and procedure of the criminal courts of Louisiana and shall be a member in good standing of the Louisiana Bar or admitted to practice *pro hac vice*.

Standard 7-1.2. Evidentiary Matters. The attorney shall be familiar with the use of expert witnesses and evidence, including but not limited to, psychiatric and forensic evidence.

Standard 7-1.3. Initial Training. Within one year of an initial application for certification under the standards of this Chapter, the attorney shall complete a minimum of 12 hours of Board-approved training primarily involving advocacy in the field of capital defense.

Standard 7-1.4. Continuing Training. To maintain certification, counsel shall, every two years from the date of certification, successfully complete a minimum of 12 hours of Board-approved training primarily involving advocacy in the field of capital defense.

Part II. Trial Lead Counsel. To be certified to serve as trial lead counsel, an attorney shall also satisfy the following minimum standards.

Standard 7-2.1. Eligibility Criteria. Trial lead counsel shall:

(A) Be an experienced and active trial practitioner with at least five years of litigation experience;

(B) Have prior experience as lead counsel in no fewer than nine jury trials tried to completion; of these nine jury trials, at least five must have involved felonies or two must have involved the charge of murder; and

(C) Have prior experience as lead counsel or associate counsel in at least one case in which the death penalty was sought and was tried through the penalty phase or have prior experience as lead counsel or associate counsel in at least two cases in which the death penalty was sought and where, although resolved prior to trial or at the guilt phase, a thorough investigation was performed for a potential penalty phase.

Part III. Trial Associate Counsel. To be certified to serve as trial associate counsel in a capital case, an attorney shall also satisfy the following minimum standards.

Standard 7-3.1. Eligibility Criteria. Trial associate counsel shall:

(A) Be an experienced and active trial or appellate practitioner with at least three years of litigation experience; and

(B) Have prior experience as lead counsel in no fewer than three felony jury trials which were tried to completion, including service as lead or associate counsel in at least one homicide trial.

Part IV. Appellate Lead Counsel. To be certified to serve as lead counsel in the appeal of a capital case, an attorney shall also satisfy the following minimum standards.

Standard 7-4.1. Eligibility Criteria. Unless certified in accordance with Part VI of this Chapter, appellate lead counsel shall:

(A) Be familiar with the practice and procedure of the Louisiana Supreme Court in the appeal of capital cases;

(B) Be an experienced and active trial or appellate practitioner with at least three years experience in the field of criminal defense;

(C) Have prior experience within the last three years as lead counsel in the appeal of no fewer than three felony convictions in federal or state court; and

(D) Have prior experience within the last three years as lead counsel or associate counsel in the appeal or post-conviction application, in federal or state court, of at least one case where a sentence of death was imposed.

Part V. Appellate Associate Counsel. To be certified to serve as associate counsel in the appeal of a capital case, an attorney shall also satisfy the following minimum standards.

Standard 7-5.1. Eligibility Criteria. Unless certified in accordance with Part IV of this Chapter, appellate associate counsel:

(A) Shall be familiar with the practice and procedure of the Louisiana Supreme Court in the appeal of capital cases; and

(B) May have less experience than an attorney qualified to serve as lead appellate counsel, although such attorney shall have demonstrated adequate proficiency in appellate advocacy in the field of felony defense.

Part VI. Alternative Certification Procedure. Notwithstanding Parts II through IV of this Chapter, a district court judge may move the Board to certify as trial lead counsel, trial associate counsel, or appellate lead counsel, an attorney who does not strictly satisfy the specific standards above.

Standard 7-6.1. District Court Judge Recommendation. An attorney recommended by a district court judge for certification under Part VI of this Chapter shall include the following original documents in support of his or her application:

(A) A written and signed recommendation for certification from a district court judge having jurisdiction over felony matters and who is familiar with the applicant's qualifications and experience as an attorney. The recommendation from the district court judge shall: (1) certify that the applicant is in substantial compliance with the minimum standards required in this Chapter; (2) set forth in detail those qualifications and experience which cause the judge to recommend the applicant; and (3) set forth the particular facts and circumstances, familiar to the judge, which demonstrate the applicant's competency and commitment to handle a capital case. The trial judge's recommendation may consider, among other facts and circumstances supporting certification of the applicant:

(a) The number of felony and misdemeanor jury trials, tried to completion, handled by the applicant;

(b) The number of felony and misdemeanor cases handled by the applicant;

(c) The number and nature of appellate cases handled by the applicant;

(d) The applicant's handling of complex and time consuming civil litigation before the recommending trial judge;

(e) The applicant's ability to rely on available and sufficient resources in preparation for a capital case;

(f) The applicant's demonstrated commitment to *pro bono* work on a continuing basis;

(g) The applicant's experience as a prosecutor; and

(h) Additional matters which the recommending judge deems appropriate for consideration.

(B) A written and signed certification by the applicant that he or she will promptly and diligently work to satisfy those standards of Parts II-IV which are not required for certification under Part VI of this Chapter.

(C) A written and signed certification by the applicant that he or she, if certified under Part VI of this Chapter, will not represent at trial an indigent client charged with a capital crime or file a brief as appellate lead counsel prior to successfully completing a minimum of 12 hours of Board-approved training primarily involving advocacy in the field of capital defense.

(D) A written and signed certification by the applicant that he or she meets the appropriate requirements under Standard 7-6.2 for trial lead counsel, Standard 7-6.3 for trial associate counsel, or Standard 7-6.4 for appellate lead counsel.

Standard 7-6.2. Alternative Requirements; Trial Lead Counsel. An attorney seeking certification as trial lead counsel under Part VI of this Chapter, shall:

(A) Satisfy Standards 7-1.1, 7-1.2, and 7-2.1(A) of this Chapter;

(B) Substantially satisfy Standard 7-2.1(B) or 7-2.1(C); and

(C) In the case of certification by the Louisiana Indigent Defender Board,

the applicant, prior to the start of trial in a capital case he or she has been appointed to handle, must successfully complete a minimum of 12 hours of Board-approved training primarily involving advocacy in the field of capital defense.

Standard 7-6.3. Alternative Requirements; Trial Associate Counsel.

An attorney seeking certification as trial associate counsel under Part VI of this Chapter, shall:

(A) Satisfy Standards 7-1.1, 7-1.2, and 7-3.1(A) of this Chapter;

(B) Substantially satisfy Standard 7-3.1(B) of this Chapter; and

(C) In the case of certification by the Louisiana Indigent Defender Board, the applicant, prior to the start of trial in a capital case he or she has been appointed to handle, must successfully complete a minimum of 12 hours of Board-approved training primarily involving advocacy in the field of capital defense.

Standard 7-6.4. Alternative Requirements; Appellate Lead Counsel.

An attorney seeking certification as appellate lead counsel under Part VI of this Chapter, shall:

(A) Satisfy Standards 7-1.1, 7-1.2, 7-4.1(A) and 7-4.1(B) of this Chapter;

(B) Substantially satisfy Standard 7-4.1(C) or 7-4.1(D); and

(C) In the case of certification by the Louisiana Indigent Defender Board, the applicant, prior to filing a brief in the appeal of a capital case he or she has been appointed to handle, must successfully complete a minimum of 12 hours of Board-approved training primarily involving advocacy in the field of capital defense.

Part VII. Monitoring; Removal. Attorneys certified within the guidelines of this Chapter shall be monitored to ensure eligibility.

Standard 7-7.1. Status and Training Criteria. An attorney who fails to maintain his or her status and educational requirements as defined in Part I of this Chapter shall not be considered certified for purposes of appointment in capital cases. An attorney may seek recertification once the criteria of Part I are satisfied.

Standard 7-7.2. Ineffectiveness. Where there is compelling evidence that an attorney has inexcusably ignored basic responsibilities of an effective lawyer, resulting in prejudice to an indigent client's case, the attorney shall not be considered certified for purposes of appointment in capital cases. In this instance,

an attorney shall be given an opportunity to respond in writing to specific charges of ineffectiveness.

Standard 7-7.3. Review of Active Representation. Representation of an accused establishes an inviolable attorney-client relationship. Thus, an attorney's eligibility to represent an indigent client may not be reviewed, except by a court of proper jurisdiction, on the basis of conduct involving a case in which the attorney is presently actively representing the indigent client.

Standard 7-7.4. Recertification. An attorney decertified under Standard 7-7.2 shall not be recertified unless the decertification is shown to have been erroneous or it is established by clear and convincing evidence that the cause of the failure to meet basic responsibilities has been identified and corrected.

Part VIII. Number of Attorneys for Capital Defense. The following number of attorneys should be appointed in cases involving an indigent defendant charged with a capital crime or where an appeal has been lodged in a case where the death penalty has been imposed.

Standard 7-8.1. Trial Counsel. In cases where a defendant is charged with a crime for which the death penalty may be imposed, not less than two certified trial attorneys, one of which must be certified trial lead counsel in accordance with this Chapter, shall be assigned to represent the defendant.

Standard 7-8.2. Appellate Counsel. In cases where the death penalty has been imposed on an indigent defendant and an appeal has been taken, an attorney, certified as appellate lead counsel in accordance with this Chapter, shall be assigned to represent the defendant. It is recommended, but not mandated, that a certified appellate associate counsel be assigned to assist in the appeal, although the degree of participation of the associate counsel may be less than lead counsel.

Part IX. Workload. The following standards shall serve as guides to attorneys eligible for appointment in capital cases.

Standard 7-9.1. Professional Obligation. Attorneys accepting appointments pursuant to these standards should provide each indigent client with quality representation in accordance with constitutional and professional standards. Capital counsel should not accept workloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.

Standard 7-9.2. Determination of Workload. To determine maximum

workload, an attorney should consider, among other factors, quality of representation, speed of turnover of cases, percentage of cases tried, extent of support services available, court procedures, and involvement in complex litigation.

Part X. Support Services.

Standard 7-10.1. Securing Support Services. Counsel appointed to represent a capital defendant should secure all proper and necessary support services, including, but not limited to, investigative, expert, mitigation, and any other support services necessary to prepare and present an adequate defense. An attorney should use all available support services and facilities needed for an effective performance at every stage of the proceedings, including pretrial, trial and sentencing. Counsel should seek financial and technical assistance from all possible sources, including the district indigent defender board and the Capital Program, Expert Witness/Testing Fund, and District Assistance Fund of the Louisiana Indigent Defender Board.

Part XI. Compensation.

Standard 7-11.1. Compensation of Staff, Contract, and Appointed Counsel. Staff, contract, and appointed counsel should be compensated in accordance with the guidelines established in the *Louisiana Standards on Indigent Defense: Standards Relating to the Qualification and Compensation of Staff, Contract, and Appointed Counsel Involved in Indigent Defense*.

Part XII. Certification Procedure. Any attorney who desires to be certified under the guidelines of this Chapter shall do so in accordance with the policies and procedures established and promulgated by the Louisiana Indigent Defender Board.