

CONSIDERATIONS AND RECOMMENDATIONS FOR APPOINTMENT OF COUNSEL IN CAPITAL CASES

INTRODUCTION:

The *Considerations and Recommendations For Appointment of Counsel in Capital Cases* reflects the Court and defense counsels' efforts to ensure that quality and effective legal representation in death penalty cases is afforded to all indigent defendants charged in such cases who cannot afford to hire counsel in their defense. The drafters note that these considerations and recommendations have been promulgated solely to assist and aid courts in appointment of counsel in capital cases. These considerations and recommendations are not mandatory upon any Court, nor do they supplement or create any new legal right or rights. Rather the sole statutory criteria governing appointments in capital cases are set forth in Section 13A-5-54 Code of Alabama (1975). It is the desire of the drafters that these considerations and recommendations are to be used solely in the sound discretion of the Court to ensure the objective as set out herein.

OBJECTIVE:

The objective of these considerations and recommendations is that in providing counsel in cases in which the death penalty is sought the Court wishes to ensure that quality and effective legal representation is afforded to all defendants eligible for the appointment of counsel.

NUMBER OF ATTORNEYS PER CASE:

In cases where the death penalty is sought, two qualified attorneys may be appointed at the District Court level to represent the defendant unless the capital charge is made after indictment when in such case two qualified attorneys may be appointed as soon as possible but not later than pretrial/arraignment.

COMMITTEE NOTES:

A review of the procedures of the appointment of two attorneys in death penalty cases across the country indicates the overwhelming majority of State's mandate the appointment of two qualified counsel in death penalty cases. This includes virtually every Southern State. The Committee contemplates that Courts will appointment two qualified

counsel given this consensus across the country and the United States Supreme Court's decision in Wiggins.

SUPPORTING SERVICES:

Appointed counsel shall where the Court deems appropriate be provided with the investigative, expert, and other services necessary to prepare and present an adequate defense at trial in the guilt, punishment and sentencing phases in accordance and consistent with Alabama law and United States constitutional law. The Court shall approve expenses for investigative, mitigation and any other experts required under Ake v. Oklahoma, Wiggins v. Smith, and Ex parte Dubose. It is contemplated that expert services will be sought by defense counsel in Circuit Court as soon as possible and no later than arraignment.

COMMITTEE NOTES:

The Committee believes that the granting of funds for the hiring of investigative and expert service to prepare and present a defense in all facets of capital litigation, trial and sentencing is consistent with other States' guidelines, the ABA and NADLA standards and recent decisions of the United States Supreme Court specifically Wiggins.

WORKLOAD AND OBLIGATIONS OF COUNSEL RESPECTING WORKLOAD:

It is contemplated that work loads of attorneys appointed to represent defendants in death penalty cases is maintained at a level that enable counsel to provide each client with high quality legal representation in accordance with these considerations and recommendations. Counsel representing clients in death penalty cases should limit their acceptance of capital appointments per year and as needed to provide each client with high quality legal representation.

ATTORNEY ELIGIBILITY:

The Court should distribute appointments in capital cases to attorneys who possess the following qualifications:

TRIAL COUNSEL:

A. Lead trial counsel appointments should be made to attorneys who:

- (i) are members of the bar admitted to practice in the State or admitted to practice *pro hac vice* and
- (ii) have no less than five (5) years prior experience in the active practice of criminal law as required by Section 13A-5-54 of the Alabama Criminal Code; and
- (iii) have been lead (or co)counsel in no fewer than five (5) capital cases that were death eligible and counsel in at least five (5) serious felony jury trials tried to conclusion. “Serious Felony” is defined by any Class A felony and
- (iv) have attended and successfully completed within two years of their appointment, a training program on the trial of death penalty cases; and
- (v) maintain and certify at least 12 hours of continuing legal education every two years focused on death penalty representation; and
- (vi) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

B. Trial co-counsel appointments should be made to attorneys who:

- (i) are members of the bar admitted to practice in the State or admitted to practice *pro hac vice* and
- (ii) have no less than five (5) years prior experience in the active practice of criminal law as required by Section 13A-5-54 of the Alabama Criminal Code; and
- (iii) have been counsel in no fewer than three (3) serious felony jury trials tried to conclusion. “Serious Felony” is defined by any Class A felony; and
- (iv) have attended and successfully completed within two years of their appointment, a training program on the trial of death penalty cases; and
- (v) maintain and certify at least 12 hours of continuing legal education every two years focused on death penalty representation; and
- (vi) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

TRAINING:

All counsel seeking to qualify to receive capital appointments are required to attend, satisfactorily complete and certify to the Courts' satisfaction a comprehensive training program, approved by the Court, in the defense of capital cases within two years of the appointment for representation in a capital case. It is contemplated that a comprehensive training program is devoted to the specific training of lawyers to defend clients in capital cases at trial. Such programs include but are not limited to the Clarence Darrow Death Penalty College, The Bryant R. Shechmeister Death Penalty College, and other such programs approved by the Court.

All counsel seeking to remain on the roster of qualified counsel are required to attend, successfully complete and certify to the Courts satisfaction at least 12 hours of continuing legal education every two years focuses on death penalty representation.

IMPLEMENTATION OF CONSIDERATIONS AND RECOMMENDATIONS:

It is contemplated that the implementation of these recommendations and considerations will occur 1 year after their approval. All lawyers who have been appointed capital cases prior to the implementation of these considerations and recommendations will be included in the pool of lawyers for appointment of capital cases. The current appointment procedures for lead and co-counsel will remain the same in the interim in order that the orderly appointment of counsel in capital cases will continue and that the considerations and recommendations be disseminated to the defense bar so that defense lawyers interested in being appointed either lead or co-counsel can prepare to meet the necessary requirements for appointment once the Courts begin to use the considerations and recommendations as part of the appointment process.