

GOVERNMENT CODE

TITLE 2. JUDICIAL BRANCH

SUBTITLE F. COURT ADMINISTRATION

CHAPTER 78. CAPITAL AND FORENSIC WRITS COMMITTEE AND OFFICE OF
CAPITAL AND FORENSIC WRITS

SUBCHAPTER A. CAPITAL AND FORENSIC WRITS COMMITTEE

Sec. 78.001. DEFINITIONS. In this subchapter:

(1) "Committee" means the capital and forensic writs committee established under this subchapter.

(2) "Office of capital and forensic writs" means the office of capital and forensic writs established under Subchapter B.

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 12, eff. September 1, 2015.

Sec. 78.002. ESTABLISHMENT OF COMMITTEE; DUTIES. (a) The capital and forensic writs committee is established.

(b) The committee shall provide oversight and strategic guidance to the office of capital and forensic writs, including:

(1) recommending to the court of criminal appeals as provided by Section 78.004 a director for the office of capital and forensic writs when a vacancy exists for the position of director;

(2) setting policy for the office of capital and forensic writs; and

(3) developing a budget proposal for the office of capital and forensic writs.

(c) The committee may not access privileged or confidential information.

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 13,

eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 292 (S.B. 280), Sec. 1, eff. September 1, 2021.

Sec. 78.003. APPOINTMENT AND COMPOSITION OF COMMITTEE.

(a) The committee is composed of the following five members who are appointed as follows:

(1) three attorneys who are appointed by the executive director of the Texas Indigent Defense Commission; and

(2) two attorneys who are appointed by the president of the State Bar of Texas, with ratification by the executive committee of the State Bar of Texas.

(a-1) Each member of the committee must be a licensed attorney and must have significant experience in capital defense or indigent criminal defense policy or practice. A member of the committee may not be a prosecutor, a law enforcement official, a judge of a court that presides over criminal offenses, or an employee of the office of capital and forensic writs.

(a-2) Members of the committee serve four-year terms and may be reappointed.

(a-3) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

(b) The committee shall elect one member of the committee to serve as the presiding officer of the committee.

(c) The committee shall meet at the call of the presiding officer of the committee.

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 292 (S.B. 280), Sec. 2, eff. September 1, 2021.

Sec. 78.004. RECOMMENDATION AND APPOINTMENT OF DIRECTOR OF

OFFICE OF CAPITAL AND FORENSIC WRITS. (a) The committee shall submit to the court of criminal appeals, in order of the committee's preference, a list of the names of not more than five persons the

committee recommends that the court consider in appointing the director of the office of capital and forensic writs when a vacancy exists for the position of director. If the committee finds that three or more persons under the committee's consideration are qualified to serve as the director of the office of capital and forensic writs, the committee must include at least three names in the list submitted under this subsection.

(b) Each person recommended to the court of criminal appeals by the committee under Subsection (a):

(1) must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases, as described by the Guidelines and Standards for Texas Capital Counsel, as published by the State Bar of Texas; and

(2) may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a criminal case.

(c) When a vacancy for the position exists, the court of criminal appeals shall appoint from the list of persons submitted to the court under Subsection (a) the director of the office of capital and forensic writs.

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. [1091](#)), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. [1743](#)), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. [1743](#)), Sec. 15, eff. September 1, 2015.

SUBCHAPTER B. OFFICE OF CAPITAL AND FORENSIC WRITS

Sec. 78.051. DEFINITIONS. In this subchapter:

(1) "Committee" means the capital and forensic writs committee established under Subchapter A.

(2) "Office" means the office of capital and forensic writs established under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. [1091](#)), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 17, eff. September 1, 2015.

Sec. 78.052. ESTABLISHMENT; FUNDING. (a) The office of capital and forensic writs is established and operates under the direction and supervision of the director of the office.

(b) The office shall receive funds for personnel costs and expenses:

(1) as specified in the General Appropriations Act; and

(2) from the fair defense account under Section 79.031, in an amount sufficient to cover personnel costs and expenses not covered by appropriations described by Subdivision (1).

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. 1754), Sec. 3, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 18, eff. September 1, 2015.

Sec. 78.053. DIRECTOR; STAFF. (a) The court of criminal appeals shall appoint a director to direct and supervise the operation of the office. The director serves a four-year term and continues to serve until a successor has been appointed and qualified. The court of criminal appeals may remove the director only for good cause. The director may be reappointed for a second or subsequent term.

(b) The director shall employ attorneys and employ or retain licensed investigators, experts, and other personnel necessary to perform the duties of the office. To be employed by the director, an attorney may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a criminal case.

(c) The director and any attorney employed by the office may

not:

- (1) engage in the private practice of criminal law; or
- (2) accept anything of value not authorized by law for services rendered under this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. [1091](#)), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. [1743](#)), Sec. 19, eff. September 1, 2015.

Sec. 78.054. POWERS AND DUTIES. (a) The office may not accept an appointment under Article [11.071](#), Code of Criminal Procedure, if:

- (1) a conflict of interest exists;
- (2) the office has insufficient resources to provide adequate representation for the defendant;
- (3) the office is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or
- (4) other good cause is shown for not accepting the appointment.

(b) The office may not represent a defendant in a federal habeas review. The office may not represent a defendant in an action or proceeding in state court other than an action or proceeding that:

- (1) is conducted under Article [11.071](#), Code of Criminal Procedure;
- (2) is collateral to the preparation of an application under Article [11.071](#), Code of Criminal Procedure;
- (3) concerns any other post-conviction matter in a death penalty case other than a direct appeal, including an action or proceeding under Article [46.05](#) or Chapter [64](#), Code of Criminal Procedure; or
- (4) is conducted under Article [11.073](#), Code of Criminal Procedure, or is collateral to the preparation of an application under Article [11.073](#), Code of Criminal Procedure, if the case was referred in writing to the office by the Texas Forensic

Science Commission under Section 4(h), Article 38.01, Code of Criminal Procedure.

(c) Notwithstanding Article 26.04(p), Code of Criminal Procedure, the office may independently investigate the financial condition of any person the office is appointed to represent. The office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this section.

(d) The office may consult with law school clinics with applicable knowledge and experience and with other experts as necessary to investigate the facts of a particular case.

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1215 (S.B. 1743), Sec. 20, eff. September 1, 2015.

Sec. 78.055. COMPENSATION OF OTHER APPOINTED ATTORNEYS. If it is necessary that an attorney other than an attorney employed by the office be appointed, that attorney shall be compensated as provided by Articles 11.071 and 26.05, Code of Criminal Procedure.

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. 1091), Sec. 1, eff. September 1, 2009.

Sec. 78.056. APPOINTMENT LIST. (a) The presiding judges of the administrative judicial regions shall maintain a statewide list of competent counsel available for appointment under Section 2(f), Article 11.071, Code of Criminal Procedure, if the office does not accept or is prohibited from accepting an appointment under Section 78.054. Each attorney on the list:

(1) must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases; and

(2) may not have been found by a state or federal court to have rendered ineffective assistance of counsel during the trial or appeal of a death penalty case.

(b) The Office of Court Administration of the Texas Judicial System and the Texas Indigent Defense Commission shall provide administrative support necessary under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 781 (S.B. [1091](#)), Sec. 1, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 984 (H.B. [1754](#)), Sec. 4, eff. September 1, 2011.