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## SENATE BILL NO. 1189

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 19.2-163.03 of the Code of Virginia, relating to the qualifications for court-appointed counsel.

Patron—Reynolds

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 19.2-163.03 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-163.03. Qualifications for court-appointed counsel.

A. *Initial qualification requirements.* An attorney seeking to represent an indigent accused in a criminal case, in addition to being a member in good standing of the Virginia State Bar, shall meet the specific criteria required for each type or level of case. The following criteria shall be met for qualification and subsequent court appointment:

In accordance with § 19.2-163.01, to 1. Misdemeanor case. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant charged with a misdemeanor, the attorney shall be a member in good standing of the Virginia State Bar, and:

(i) if an active member of the Virginia State Bar for less than one year, have completed six hours of MCLE-approved continuing legal education developed by the Indigent Defense Commission, or

(ii) if an active member of the Virginia State Bar for one year or more, either complete the six hours of approved continuing legal education developed by the Commission, or certify to the Commission that he has represented, in a district court within the past year, four or more defendants charged with misdemeanors, or

(iii) be qualified pursuant to this section to serve as counsel for an indigent defendant charged with a felony.

**B2. Felony case.**

a. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant charged with a felony, the attorney shall (i) be a member in good standing of the Virginia State Bar, (ii) have completed the six hours of MCLE-approved continuing legal education developed by the Commission, and (iii)(ii) certify that he has participated as either lead counsel or co-counsel in four felony cases, originating in district court, from their beginning through to their final resolution, including appeals, if any.

b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past year, as lead counsel in four felony cases, originating in district court, through to their final resolution, including appeals, if any, the requirement to complete six hours of continuing legal education and the requirement to participate as co-counsel shall be waived.

c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years, as lead counsel in five felony cases, originating in district court, through to their final resolution, including appeals, if any, the requirement to participate as either lead counsel or co-counsel in four felony cases within the past year shall be waived.

**C3. Juvenile and domestic relations case.**

a. To initially qualify to serve as appointed counsel in a juvenile and domestic relations district court pursuant to subdivision B 2 of § 16.1-266, the attorney shall (i) be a member in good standing of the Virginia State Bar, (ii) have completed the six hours of MCLE-approved continuing legal education developed by the Commission, (iii)(ii) have completed four additional hours of MCLE-approved continuing legal education on representing juveniles developed by the Commission, and (iv)(iii) certify that he has participated as either lead counsel or co-counsel in four cases involving juveniles in a juvenile and domestic relations district court.

b. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has, within the past year, been lead counsel in four cases involving juveniles in juvenile and domestic relations district court, the requirement to complete the 10 hours of continuing legal education shall be waived.

c. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years in five cases involving juveniles in a juvenile

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59 and domestic relations district court, the requirement to participate as either lead counsel or ~~co-counsel~~  
60 *co-counsel* in four juvenile cases shall be waived.

61 *DB. Requalification requirements.* After initially qualifying as provided in subsection A, an attorney  
62 shall maintain his eligibility for certification by ~~completing~~ biennially thereafter by notifying the  
63 Commission of completion of at least six hours of Commission and MCLE-approved continuing legal  
64 education, ~~certified by the Commission~~. The Commission shall provide information on continuing legal  
65 education programs that have been approved.

66 In addition, to maintain eligibility to accept court appointments under subdivision B 2 of § 16.1-266,  
67 an attorney shall complete biennially thereafter four additional hours of MCLE-approved continuing  
68 legal education on representing juveniles, certified by the Commission.

69 *EC. Waiver and exceptions.* The Commission or the court before which a matter is pending, may, in  
70 its discretion, waive the requirements set out in this section for individuals who otherwise demonstrate  
71 their level of training and experience. A waiver of such requirements pursuant to this subsection shall  
72 not form the basis for a claim of error at trial, on appeal, or in any habeas corpus proceeding.