

## **PREAMBLE**

The following Local Rules apply to all felony criminal proceedings in the McLennan County District Courts. These rules are effective December 1, 2009.

The rules in this Indigent Defense plan will govern felony criminal proceedings in the District Courts of McLennan County, Texas and will take precedence over any other local rule to the contrary.

Approved on November 30, 2009 by:

Judge Ralph Strother  
19<sup>th</sup> District Court

Judge Matt Johnson  
54<sup>th</sup> District Court

Judge Gary Coley  
74<sup>th</sup> District Court

Judge Jim Meyer  
170<sup>th</sup> District Court

Judge Vicki Menard  
414<sup>th</sup> District Court

### **Prompt Magistration:**

1. The person making the arrest or the person having custody of the arrested person shall take the arrested person before a magistrate without unnecessary delay, but not more than 48 hours after a felony arrest or 24 hours after a misdemeanor arrest.
2. Whenever an arrested person is first brought before a magistrate, the magistrate shall perform the duties described in Article 15.17 of the Code of Criminal Procedure, conducting what will hereinafter be referred to as an Article 15.17 hearing, which will include the following:
  - a. The magistrate shall specifically inform the person arrested of the person's right to request appointment of counsel if the person cannot afford counsel.
  - b. The magistrate shall specifically ask the person arrested whether the person wants to request appointment of counsel.
  - c. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel.
  - d. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the time of the Article 15.17 hearing.
  - e. If the arrested person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31 of the Code of Criminal Procedures.
3. In each case in which an arrested person is taken before a magistrate for an Article 15.17 hearing, the magistrate will make a written record on a form titled "Magistrate Warning" of the following information:
  - a. That the magistrate informed the person of the person's right to request appointment of counsel;
  - b. That the magistrate asked the person whether the person wanted to request appointment of counsel; and
  - c. Whether or not the person requested appointment of counsel by completing the "Financial Affidavit for Court Appointment of Attorney".
4. If the arrested person requests appointment of counsel, the magistrate shall transmit or cause to be transmitted to the appropriate Criminal Court Administrator, depending on whether the charged offense is a felony or misdemeanor, the name of the arrested person requesting appointment of counsel. This transmittal must occur without unnecessary delay, but not later than 24 hours after a request is made.

## **Indigence Determination Standards**

1. After the Article 15.17 hearing, if the arrested person has informed the magistrate that he/she wants to request court appointed counsel, a Criminal Court Administrator or other Criminal Court designee shall review the arrested person's "Financial Affidavit for Court Appointment of Attorney".
2. The District Court Judge making appointments of counsel for indigent defendants shall consider the following factors and financial data in determining indigence:
  - The defendant's income from any and all sources;
  - The Sources of the defendant's income;
  - Assets of the defendant;
  - Property owned by the defendant, or property in which the defendant has an interest;
  - Outstanding obligations of the defendant;
  - Necessary expenses of the defendant;
  - The number and age of the defendant's legal dependents;
  - Spousal income available to the defendant; and
  - Any other reasonable factor(s) the judge finds bears on the financial inability of the defendant to retain counsel.
3. The District Court Judge making an appointment of counsel for an indigent defendant shall not consider whether the defendant has posted or is capable of posting bail in determining indigency, except to the extent that it reflects the defendant's financial circumstances as measured by the factors listed above.
4. Based on the financial data given by the arrested person, a determination will be made as to whether the person meets the financial standard for indigence in McLennan County. That standard is outlined as follows:
  - a. The defendant's necessary expenses will be subtracted from the defendant's gross income, including spousal income if applicable. The resulting number will be referred to the defendant's "net income."
  - b. "Necessary expenses" should include but are not limited to: rent or mortgage, food/groceries, car payment, car insurance, utilities.
  - c. The defendant's "net income" will be used to determine if the individual is indigent based on the income for one person under the Federal Poverty Guidelines. If the defendant's "net income" is \$716 or more a month, they will not qualify for a court appointed attorney. If the defendant's "net income" is less than \$716 a month, they will qualify for a court appointed attorney.
5. A defendant who is determined to be indigent is presumed to remain indigent for the remainder of the proceedings of the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or non-indigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.
6. Any written or oral statements elicited from the defendant during this process or evidence derived from the financial data may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant.
7. At any time a defendant may request a court appointed attorney, and the District Court Judge who presides over the defendant's case has the discretion to appoint an attorney to that defendant.

## Minimum Attorney Qualifications

To be eligible for placement on each public appointment list, attorneys must complete the “Application and Affidavit for the McLennan County District Courts Attorney Appointment List” and must meet the following minimum qualifications:

1. To qualify for any felony appointment, including appeals, an attorney must have completed eight hours of CLE in criminal law or procedure in the last year, including carryover. In addition, the Legislative Update Seminar must be attended in any year the Legislature meets.
2. To qualify for the State Jail Felony list, an attorney must have at least one-year prior experience in criminal litigation, and prior experience as lead or co-counsel in at least one criminal trial.
3. To qualify for the Second and Third Degree Felony list, an attorney must have at least two years prior experience in criminal litigation, and prior experience as trial counsel in two or more felony jury trials, as lead or co-counsel.
4. To qualify for the First Degree and 3(g) Felony list, an attorney must either be board certified in criminal law, OR
  - Have at least three years experience in criminal litigation; and
  - Have prior experience as trial counsel in three felony jury trials in the last five years, having served as lead counsel in at least two or those trials; and
  - Have completed twelve hours of CLE in criminal law or procedure in the last calendar year.
5. To qualify for the Felony Appellate List, an attorney must have at least two years prior experience in criminal litigation and/or appellate experience.
6. In lieu of the above qualification requirements, in extraordinary circumstances, an attorney may be deemed qualified by personal approval of a District Court Judge.
7. If an attorney does not meet the qualifications to accept cases of a certain degree, but would like the judges to consider qualifying him/her for that list under the provision above, he/she can fill out a form called an “Application for Exception to Qualifications to Receive Court Appointment” and turn that in with the Application.
8. Any application submitted by an attorney shall be reviewed by a District Judge. If the District Judge determines the attorney is qualified to be placed on the appointment list, the District Judge shall approve the application. No attorney may be placed on the appointment list without approval by a District Judge.
9. To remain on the court appointment list:
  - a. All attorneys must complete eight (8) hours of CLE in criminal law or procedure yearly. In addition, the Legislative Update Seminar must be attended in any year the Legislature meets.
  - b. By January 15<sup>th</sup> of each year, all attorneys on the court appointment list must submit verification of their CLE to the court.
  - c. Maintain an office with a business phone that is answered by a receptionist or answering service from 8:00 a.m. through 5:00 p.m., Monday through Friday (except for official county holidays).
  - d. Have a receptionist or answering service that can promptly notify you of any and all appointments or court hearings.
  - e. Maintain a fax number to which faxes can be received 24 hours a day, 7 days a week.
  - f. Maintain, or have access to, an office or conference room in which you can

- meet and interview defendants.
- g. Provide a physical address of your office to the court.
  - h. Have an e-mail address to receive notification from the court regarding appointments and court hearings.

### **Minimum Attorney Qualifications Death Penalty Cases**

1. The presiding judge of a District Court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, to represent an indigent defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty.
2. If an arrested person is charged with capital murder and requests a court appointed attorney at magistration, a Criminal District Court Administrator may interview the defendant to determine if the person meets the standards of indigency in McLennan County. If the defendant qualifies for a court appointed attorney, the presiding judge in the capital murder case will make the appointments according to the rule above.

## **PROMPT APPOINTMENT COUNSEL**

1. Counsel shall be appointed as soon as possible, but no later than the end of the third working day after the date on which a Criminal Court Administrator receives the defendant's request for counsel. "Working day" means Monday through Friday, except for official county holidays.
2. If it is determined that a person who requests appointment of counsel is not indigent under the standards and procedures described in this plan, then that finding will be entered on the person's "Financial Affidavit for Court Appointment of Attorney," which will be filed in the court's file.
3. If it is determined that a person who requests appointment of counsel is indigent under the standards and procedures described in this plan, then the Criminal Court Administrator will notify the appointed attorney of the appointment by email.
4. If a defendant appears without counsel in any adversarial judicial proceeding that may result in punishment by confinement, the court must advise the unrepresented defendant of the right to counsel and procedures for obtaining counsel.

## **ATTORNEY SELECTION PROCESS**

1. Attorneys shall be appointed to represent indigent defendants from public appointment lists using a system of rotation as described later in this subsection.
2. The judges hereby establish the following public appointment lists from which counsel for indigent defendants shall be appointed:
  - State Jail Felony list
  - Second and Third Degree Felony list
  - First Degree and 3(g) Felony list
  - Felony Appellate list
3. Appointment of counsel to represent a defendant in a motion to revoke probation proceeding or a motion to adjudicate guilty proceeding shall be from the list appropriate for the underlying offense.
4. From time to time, as it is determined necessary by the District Court Judges, attorneys may apply to be included on one or more of the public appointment lists. Attorneys do not need to re-apply for lists they are already on, but may apply for additional lists if they have met the qualifications.
5. From time to time, as it is determined necessary by the District Court Judges, following the submission of attorney applications for the public appointment lists, the judges shall evaluate the new applicants for each list and any new exceptions to the qualifications received. Attorneys approved by the judges will be placed on the public appointment lists.
6. Each District Court Judge shall, prior to January 1 of each year, review the list of applicants who have requested to be placed on the public appointment lists to determine if those applicants meet the standards set forth by the District Judges. All attorneys who are determined to comply with the standards shall be placed on the appropriate list(s), and the judge or the judge's designee shall appoint counsel from the lists on a rotating basis.
7. With respect to the provision above, it is further provided, however, that a judge or a judge's designee shall retain the discretion to appoint any attorney to any particular case, even though that attorney is not the next one on the rotating appointment list, if the judge or the judge's designee determines that because of the facts of the case, the special needs of the defendant, or the special qualifications of the attorney, that the interests of justice would be best served by appointing someone other than the next attorney on the applicable list. If the judge or the judge's designee determines not to appoint the next attorney on the applicable list, that attorney's name shall remain next on the list.
8. Each attorney appointed under this subsection to represent a defendant shall represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.

**ATTORNEY SELECTION PROCESS ON  
DEATH PENALTY CASES**

1. To be assigned as lead counsel in a death penalty case an attorney must be on the list of attorneys approved by the local selection committee of the administrative judicial region for appointment in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure.
2. To be assigned as second chair counsel in a death penalty case an attorney must meet the qualifications outlined for the First Degree and 3(g) Felony List.

## **FEE AND EXPENSE PAYMENT PROCESS FOR ATTORNEYS**

1. Counsel appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:
  - a. Time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited
  - b. Reasonable and necessary time spent out of court on the case, supported by an itemization form
  - c. Preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Criminal Court of Appeals;
  - d. Preparation of a motion for rehearing.
2. All payments shall be paid after judicial approval, in accordance with the attached fee schedule and guidelines, which may be amended from time to time, and which were adopted by formal action of the District Court Judges, with a copy sent to the Commissioner's Court of McLennan County.
3. This fee schedule takes into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates.
4. A requisition form will be provided for appointed attorneys to itemize the types of services performed. The appointed attorney must submit these forms to the judge who presided over the case for which the attorney seeks compensation, in order for the judge to approve the payment.

## **FEE AND EXPENSE PAYMENT PROCESS INVESTIGATORS AND EXPERTS**

1. Appointed counsel must file a Motion for the Appointment of an Investigator and/or Expert. The appointed counsel may select an investigator of his/her own choice. Appointed counsel shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed, according to the procedures set forth below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.
2. Procedure With Prior Court Approval: Appointed counsel may file with the trial court a pretrial request for payment of investigative and expert expenses. Upon completion of these services, the appointed counsel and the appointed expert and/or the appointed investigator shall submit a request for the payment of investigative and expert expenses. The request for expenses must state, as applicable:
  - The type of investigation to be conducted
  - The type of expert to be retained

3. The court shall grant the request for payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:
  - State the reasons for the denial in writing
  - Attach the denial to the confidential request
4. The court shall grant the request for payment of expenses according to the following fee schedule:
  - State Jail Felony: Not to exceed \$300
  - 3<sup>rd</sup> Degree: Not to exceed \$300
  - 2<sup>nd</sup> Degree: Not to exceed \$500
  - 1<sup>st</sup> Degree: Not to exceed \$750
  - Capital: Not to exceed \$1500
  - Approval needed for fees in excess of listed amount
5. Procedure Without Prior Court Approval: Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.
6. A requisition form will be provided for appointed attorneys to itemize the types of services performed. The appointed attorney must submit this form to the judge who presided over the case for which the attorney seeks compensation, in order for the judge to approve the payment. If the judge disapproved the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and the reasons for approving an amount different than the requested amount.

## MISCELLANEOUS

1. An attorney may be removed from the appointment list if the attorney:
  - a. Has twice or more failed to contact or interview clients in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure; or
  - b. Has submitted a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure; or
  - c. Fails to maintain compliance with each of the appointment list guidelines; or
  - d. Has been found by a court to have provided ineffective assistance of counsel; or
  - e. Has violated a rule of professional responsibility; or
  - f. Has been convicted of or received a deferred adjudication for any an offense, other than an offense punishable by a fine only; or
  - g. Is under indictment or has been formally charged with an offense, other than an offense punishable by a fine only; or
  - h. Has intentionally misrepresented statements on the application for the appointment list; or
  - i. An attorney may also be removed from the appointment list for another stated good cause as determined by the District Judge(s).
2. If a District Judge believes that an attorney has violated any of the provisions listed in the paragraph above, the District Judge may refer an attorney to the board of judges for removal from the appointment list. The referral must be in writing and shall clearly state the grounds that form the basis of the referral. No disciplinary action with respect to the attorney being retained or removed from the appointment list may be made without such a referral.
3. Upon receiving an attorney referral, the District Judges shall notify the attorney in writing of the referral and inform the attorney of the grounds that form the basis of the referral. The notice shall also inform the attorney of the time and place the District Judges will meet to discuss the referral and give the attorney an opportunity to respond to the referral in writing or in person or both.
4. After the District Judges meet and give the attorney an opportunity to be heard, the District Judges shall determine whether the attorney should:
  - Remain on the appointment list at the same level;
  - Be moved to an appointment list for indigent defendants charged with less serious offenses; or;
  - Be removed from appointment list altogether.
5. The attorney may be removed from the appointment list or moved to an appointment list for indigent defendants charged with less serious offenses by a majority vote of the District Judges present. In addition, the majority of the District Judges may also vote to require the attorney to take other rehabilitative measures.
6. Removals from any list may be probated. For removal or probated removals, the District Judge ordering the removal may require the completing of rehabilitative measures as a condition of probation or reapplication. An order of removal should state in the order the earliest date at which the attorney may apply for reinstatement. An attorney who was

removed from an appointment list under “Grounds for Removal” as listed above in shall be immediately reinstated upon providing proof that the charges were dismissed or that the attorney was acquitted, unless other grounds for removal exist against the attorney that would prohibit reinstatement.

7. The decision of the District Judges is final and may not be appealed.

**Supplement to Local Rules Regarding Initial Contact and Initial Interview by  
Attorneys on the Criminal Court Appointment Lists**

**Regarding appointments for defendants in the McLennan County Jail, appointed counsel shall:**

Notify the Indigent Defense Coordinator within three (3) working days of the appointment that the attorney has:

- a. personally interviewed the defendant at the jail, by video-conference or in appropriate private conference facilities at the jail, as soon as practicable after the attorney is appointed or
- b. has made initial contact with the defendant by letter or telephone

**If initial contact made by letter or telephone to a defendant in the McLennan County Jail, then the appointed counsel shall:**

Notify the Indigent Defense Coordinator within 48 hours of the initial contact (*as set out in statement b above*) that the attorney has:

- a. personally interviewed the defendant at the jail, by video-conference or in appropriate private conference facilities at the jail, as soon as practicable after the attorney is appointed

**Regarding appointments for defendants on bond, appointed counsel shall:**

Notify the Indigent Defense Coordinator within five (5) working days of the appointment that the attorney has:

- a. personally interviewed the defendant at the attorney's office or
- b. personally interviewed the defendant at the Courthouse on the same date as the appointment or
- c. contacted or attempted to contact the defendant by letter or telephone.

**All notifications listed above are required to done using the following link on the McLennan County web page using the link:**

<http://tx-mclennancounty.civicplus.com/265/Office-for-Criminal-Appointed-Attorney>

These changes are effective July 1, 2016.

  
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Judge Ralph Strother

  
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Judge Matt Johnson

  
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Judge Mike Freeman

  
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Judge Brad Cates

## Removal from Appointment List

The Criminal Court Judges will monitor attorney performance on a continuing basis to assure the competence and qualifications of attorneys on all lists.

### Grounds for Removal

1. Any attorney failing to properly and adequately report CLE hours for the preceding reporting period by January 31 of any year will be automatically removed from all appointment lists.
2. Any attorney failing to properly and adequately file an annual report with the Texas Indigent Defense Commission will be automatically removed from all appointment lists.
3. An attorney may be removed or suspended, as appropriate, from one or more appointment lists if the attorney:
  - a. has twice or more failed to contact or interview clients in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure; or
  - b. has submitted a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure; or
  - c. fails to maintain compliance with the minimum qualification requirements or the duties of appointed counsel; or
  - d. has been found by a court to have provided ineffective assistance of counsel; or
  - e. has violated a rule of professional responsibility; or
  - f. has been convicted of or received a deferred adjudication for any an offense, other than an offense punishable by a fine only; or
  - g. is under indictment or has been formally charged with an offense, other than an offense punishable by a fine only; or
  - h. has intentionally misrepresented statements on the application for the appointment list; or
  - i. has consistently failed to perform, personally, necessary services for the defendant by requesting or directing other attorneys to perform duties required of the appointed attorney, or
  - j. has twice or more failed to comply with local court rules regarding reporting initial contacts and/or initial interviews to the Indigent Defense Coordinator, or
  - k. an attorney may also be removed from the appointment list for any other stated good cause as determined by the Judges hearing the referral.