

PREAMBLE

MCLENNAN COUNTY, TEXAS
JOINT INDIGENT DEFENSE PLAN
19TH DISTRICT COURT
54TH DISTRICT COURT
COUNTY COURT AT LAW
COUNTY COURT AT LAW NO. 2

AMENDED DECEMBER 3, 2020

INDIGENT DEFENSE COORDINATOR

The McLennan County Office of the Indigent Defense Coordinator, (“IDC”) as established by the McLennan County Commissioner’s Court and, subject to the direction of and policies and procedures adopted by the District Court judges and the County Court at Law judges in McLennan County that preside over criminal matters (“Criminal Court Judges”), shall implement this plan, develop procedures for its application, maintain records, and report to the Associate Criminal Court Judge and the Criminal Court Judges as directed.

This policy is also intended to provide procedures and guidance for the day-to-day responsibilities of the McLennan County Office of the Indigent Defense Coordinator (“IDC”).

IDC Office Location

The IDC is located in the McLennan County Courthouse. Transitory offices are located in the office of the administrator for the 54th District Court and in the McLennan County Jail in the booking and magistration areas.

Physical and Mailing Address

McLennan County IDC
501 Washington Ave., Room 109
Waco, Texas 76701

Telecommunication

Telephone (254) 759 7540

Supervision

The McLennan County IDC is under the supervision of the Indigent Defense Coordinator (“Coordinator”). The Coordinator serves as the administrator of the IDC and shall be the primary contact for all administrative, judicial, and formal correspondence. The Coordinator shall represent the IDC as required or requested.

The Coordinator is under the direct supervision of the Associate Criminal Court Judge, subject to the policies and procedures established by the Criminal Court Judges, who shall have ultimate authority over the department. The Associate Criminal Court Judge shall serve as judicial liaison for the Criminal Court Judges to advise and direct the department on all judicially relevant matters. The Coordinator has no authority or power to make or amend organizational policies, except the Coordinator may amend, adapt or modify the local policies and procedures adopted by the Criminal

Court Judges to the extent the Associate Criminal Court Judge authorizes such action in writing, subject to final approval by the Criminal Court Judges.

The Mental Health Managed Assigned Counsel (“MHMAC”) Director is a position created under the provisions of other law; however, to the extent that program provides for the appointment of counsel for a criminal defendant, the MHMAC Director will be under the direct supervision of the Criminal Court Judges and will cooperate and coordinate those duties with the IDC for the purposes of consistent appointment procedures and effective record keeping.

Approval Process for Indigent Defense Policy

Indigent Defense Policy shall be approved by the Local Administrative Statutory County Judge, Local Administrative District Judge, and the Constitutional County Judge. Each official shall sign the document, and the Coordinator shall manage the filing of the approved policy for acceptance by the Commissioner’s Court.

Approval Process for Indigent Defense Plan

The Indigent Defense Plan shall be approved by the Criminal Court Judges. The Local Administrative Statutory County Judge, Local Administrative District Judge, and the Constitutional County Judge shall sign the plan, and the IDC shall manage the filing of the approved plan for acceptance by the Commissioner’s Court and the filing of the accepted plan with the Texas Indigent Defense Commission.

PROMPT MAGISTRATION

1. The law enforcement officer making the arrest and any officer who later has custody of an accused person shall ensure that the person is taken before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested, for proceedings under Article 15.17 of the Texas Code of Criminal Procedure.
2. If the accused does not speak and understand the English language or is deaf, the magistrate shall ensure that the information and assistance are provided with the assistance of an interpreter consistent with Articles 38.0 and 38.31 of the Texas Code of Criminal Procedure.
3. Persons in custody brought before a magistrate shall be informed by the magistrate of the right to request counsel under Article 15.17 Subsection (e) and (f) of the Texas Code of Criminal Procedure. A record will be made of these proceedings and shall be preserved as required by Article 15.17.
4. If the magistrate is not authorized to appoint counsel, and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the **Magistrate’s Warning** and any other forms requesting the appointment of counsel to the IDC without unnecessary delay, but no later than 24 hours after the accused requests appointment of counsel. If an accused does not request the appointment of counsel, the magistrate shall note the same on the written Magistrate’s Warning and forward the form to the IDC.
5. For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms for requesting counsel. The magistrate will ensure assistance in completing the forms at the same time. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made.

6. If the magistrate is authorized to appoint counsel, the magistrate shall make a determination of indigence and appoint counsel, if the accused is indigent, within one working day after receipt of request for counsel consistent with Article 15.17 (a) of the Texas Code of Criminal Procedure.
7. The magistrate shall perform all duties required by Chapter 17 of the Texas Code of Criminal Procedure.
8. The Magistrate will ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.
9. A record will be made of:
 - a. Magistrate informing the accused of the accused's right to request appointment of counsel
 - b. Magistrate asking whether accused wants to request appointment of counsel
 - c. Whether the person requested court appointed counsel
10. If there is reason to believe that the accused lacks the present ability to request counsel or complete the necessary forms because of incompetency or other mental impairment, the arrested person shall be referred to the Mental Health Managed Assigned Counsel ("MHMAC") program for the appointment of counsel.

INDIGENCE DETERMINATION STANDARDS

1. A defendant is considered indigent if the defendants' household income does not exceed 125% of the poverty guidelines as established and revised annually by the U.S. Department of Health and Human Services and the difference between the defendants' monthly net income and reasonable necessary expenditures is less than \$500.
2. The court shall take into consideration, at the time the defendant requests court-appointed counsel, whether or not the defendant, or the defendant's dependents have been determined to be eligible to receive Food Stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or Public Housing.
3. A defendant is considered indigent if the defendant is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental facility is sought, and has no assets or property in excess of the amounts specified above.
4. A defendant who does not meet any of the financial standards above shall nevertheless be determined indigent if the defendant is otherwise unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents, taking into account the following:
 - a. nature of the criminal charge(s),
 - b. the anticipated complexity of the defense,
 - c. the estimated cost of obtaining competent private legal representation for the matter charged,
 - d. the amount needed for the support of the defendant and the defendant's dependents,
 - e. the defendant's income, source of income, assets and property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and
 - f. spousal income that is available to the accused.

5. Defendants who claim to be indigent and request a court-appointed attorney, shall complete and sign the **Application for Court Appointment of Attorney**, containing a statement that they are unable to hire their own attorney.
6. A defendant determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the defendant's financial circumstances occurs.
7. Factors which may not be considered in determining indigence:
 - a. the defendant's posting of bail or ability to post bail, except to the extent that it reflects the defendant's financial circumstances as measured by the factors listed above;
 - b. the resources available to friends or relatives of the defendant, excluding spouses.
8. If the court determines that a defendant has financial resources that enable the defendant to offset in part or in whole the costs of legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.
9. Any defendant who chooses not to request a court-appointed attorney shall date, sign and deliver to the IDC the **Election Declining Court Appointed Counsel**.

MINIMUM ATTORNEY QUALIFICATIONS

The Criminal Court Judges shall establish attorney appointment lists for various categories of offenses. Qualified and approved attorneys may apply for and be placed on multiple lists. To be eligible for any felony or misdemeanor appointment list, including appeal lists, an attorney must submit an **Application for Court Appointment List** in the form approved by the Criminal Court Judges, and either must be board certified in criminal law by the Texas Board of Legal Specialization, or must meet the following minimum general requirements.

Minimum General Requirements

1. The attorney must:
 - a. be a member in good standing of the State Bar of Texas;
 - b. have not received any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or of the United States within the last calendar year;
 - c. maintain his/her primary physical office in McLennan County, Texas, which is staffed during regular business hours Monday through Friday;
 - d. maintain the capability of receiving email, fax and telephone calls local to McLennan County, Texas;
 - e. maintain and utilize professional grade, private conference facilities for client meetings;
 - f. have the ability to produce typed motions and orders;
 - g. be capable of and prepared to personally and, when necessary, physically contact appointed clients in jail or other such facilities;
 - h. complete the required eight (8) or twelve (12) hours of continuing legal education ("CLE") during each reporting period, unless otherwise provided herein, and certify such completion in writing to the IDC no later than January 15 of each year; and,
 - i. certify attendance at a criminal law legislative update seminar in any year the Texas legislature meets.

Felony

An attorney seeking felony appointments, who is not board certified in criminal law, must be approved by a district judge who presides over criminal matters and, in addition to meeting the minimum general requirements, as indicated for each of the following categories, must:

1. First Degree and 3(g) felonies -
 - a. have at least three years prior experience in criminal litigation;
 - b. 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 of those trials; and
 - c. have completed twelve (12) hours of CLE in the last calendar year.
2. Second and Third Degree Felonies -
 - a. have at least two years prior experience in criminal litigation, and prior experience as lead or co-counsel in two or more felony jury trials.
3. State Jail Felonies -
 - a. have at least one year of experience in criminal litigation and prior experience as lead or co-counsel in at least one criminal trial.
4. Appeals –
 - a. be approved for the general appointment list; and,
 - b. verify -
 - 1) the attorney has personally authored and filed at least three criminal appellate briefs or post-conviction writs of habeas corpus;
 - 2) the attorney's appellate writing skills through an approved appellate writing sample; or
 - 3) at least one year experience as a briefing attorney for an appellate court.

Death Penalty Cases

1. The presiding judge of a district court in which a capital felony case is filed shall appoint two attorneys who are qualified for appointment to first degree felonies, at least one of whom must also be qualified under Article 26.052 of the Code of Criminal Procedure, 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 accused is charged with capital murder and requests a court-appointed attorney at magistration, a district judge or the IDC shall interview the defendant to determine if the person meets the standards of indigence 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 in the foregoing paragraph.

Misdemeanor

An attorney seeking misdemeanor appointments, who is not board certified in criminal law, in addition to the minimum general requirements, must:

1. General Appointment list (excluding jail docket) -
 - a. either -

- (1) have at least one (1) year of experience in the practice of criminal litigation; or,
 - (2) be sponsored by a local criminal law practitioner who has signed the application as sponsor and agrees to act as co-counsel with the applicant in at least one criminal jury trial. No participating attorney without the requisite experience will be allowed to appear in a criminal jury trial as court-appointed counsel without co-counsel approved by the Court;
 - b. agree and be prepared to continue representation through appeal; and,
 - c. be approved by the County Court at Law Judges.
2. Jail Docket list -
- a. be approved for the general appointment list;
 - b. request in writing to be added to the jail docket list; and,
 - c. personally, or through an attorney from the attorney's firm (*subject to 4. below*) -
 - 1) promptly confer with the client at the jail as required by law;
 - 2) prepare and submit all required plea papers to the Court in a timely manner; and,
 - 3) appear personally with the client for video pleas as scheduled by the Court, unless substitute counsel is approved by the Court.
3. Appeals -
- a. be approved for the general appointment list; and,
 - b. verify -
 - (1) the attorney has personally authored and filed at least one criminal appellate brief or post-conviction writ of habeas corpus;
 - (2) the attorney's appellate writing skills through an approved appellate writing sample;
 - (3) the attorney has served as lead counsel in at least one criminal jury trial at or above the county court level; or,
 - (4) at least one year experience as a briefing attorney for an appellate court.
4. Personal Responsibility -

The duties as court-appointed counsel are the personal responsibility of the attorney. Services provided by members of the attorney's firm or group on a regular basis other than the appointed attorney will constitute grounds for removing the attorney from the approved list of attorneys.

Mental Health Managed Assigned Counsel (MHMAC)

An attorney seeking appointment to misdemeanor mental health cases must be a member in good standing of the misdemeanor appointment list. An attorney seeking appointment to felony mental health cases must be a member in good standing of the felony appointment list. The MHMAC attorney appointment list will be a specialty list with limited numbers and additional experience and continuing education requirements.

- 1. Attorney applications for placement on the MHMAC list must be approved by the MHMAC Director. A limited number of attorneys will be approved by the MHMAC Director based on the needs of the MHMAC program, attorney qualifications, and attorney performance, in consultation with the Criminal Court Judges.
- 2. An attorney must:
 - a. Be a member in good standing of the criminal appointment list which corresponds with the defendant's charge (misdemeanor or felony);

- b. Have at least two (2) years of experience as a criminal prosecutor or as a criminal defense attorney;
- c. Be certified in criminal law by the Texas Board of Legal Specialization OR have experience as lead counsel in at least eight (8) criminal cases tried to verdict before a jury;
- d. Have been lead counsel in at least three (3) mental health cases in which at least one of the following was in issues: competency, sanity, or court-ordered mental health treatment. The styles and cause numbers of each case must be included in the application;
- e. Complete at least six (6) hours of approved mental health related CLE each calendar year, in addition to any CLE required for members of appointment lists. New applicants must have completed at least eight (8) hours of CLE in the calendar year preceding the submission of an application;
- f. Be familiar with the Texas Mental Health Code; and
- g. Comply with all MHMAC program policies and procedures.

Continuing Legal Education

1. The required eight (8) hours or twelve (12) hours of CLE, as applicable, must be on the topics of criminal law, criminal procedure, and ethics [*no more than one (1) ethics hour*] and must be completed during each reporting period. The required hours of CLE for the MHMAC appointment list must be on topics related to mental health criminal law and procedure.
2. Attorneys approved for felony appellate appointments must complete six (6) hours of CLE in criminal appellate law and procedure during each reporting period.
3. The CLE reporting period is the calendar year, (January 1 through December 31), immediately preceding the reporting date, except for approved misdemeanor attorneys in their initial reporting year.
4. CLE completed within the twelve (12) month period immediately preceding an attorney's application to receive court appointments may be used to meet the educational requirements for the initial year.
5. CLE completed during any reporting period in excess of the minimum for such period (*carryover*) may be applied to the following calendar year's requirement. Carryover, however, may only be applied to the reporting period immediately following the period in which the credit was acquired, and may not carryover more than one year.
6. Only one (1) hour of CLE per reporting period may be self-study, including carryover.
7. Attorneys who are exempt from the State Bar of Texas minimum CLE requirements due to age are exempt from the eight (8) or twelve (12) hour CLE requirement herein, but must attend a criminal law legislative update every year the Texas Legislature meets. This paragraph does not exempt attorneys on the MHMAC appointment list.

Attorney Reporting [*Article 26.04(j) Code of Criminal Procedure*]

Beginning October 15, 2014, attorneys who receive appointments in the prior fiscal year shall submit to the Texas Indigent Defense Commission a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases for the prior 12 months beginning October 1 and ending on September 30.

This report must be submitted through the online form on the website of the Texas Indigent Defense Commission.

Prompt Appointment of Counsel

1. Counsel shall be appointed as soon as possible, but no later than the end of the third working day after the date the IDC receives the defendant's Financial Affidavit for Court Appointment of Attorney. "Working day" means Monday through Friday, excluding official county holidays.

a. If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within three (3) working days of this county's receipt of the request for counsel.

b. If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh (11th) day after the arrest, the defendant is still in this county's custody.

2. If a defendant requesting appointment of counsel is not indigent under the standards and procedures described in this plan and adopted by the Criminal Court Judges, the attached **Finding of Ineligibility**, containing the findings of the IDC or the Court, shall be completed and filed in the court's file.

3. If a defendant requesting appointment of counsel is indigent under the standards and procedures described in this plan and adopted by the Criminal Court Judges, the IDC will notify the appointed attorney pursuant to adopted procedures.

4. If a defendant appears without counsel in any adversarial judicial proceeding that may result in punishment by confinement, unless the defendant has previously waived counsel in writing and on the record, the court must advise the unrepresented defendant of the right to counsel and of the procedures for requesting court-appointed counsel.

5. If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website at <http://tidc.tamu.edu/public.net/> or from: Cathy Edwards, McLennan County Indigent Defense Coordinator at cathy.edwards@co.mclennan.tx.us. The defendant may submit these forms to: cathy.edwards@co.mclennan.tx.us. The court will rule on all requests for counsel submitted in this manner.

6. Additional Procedures for Mental Health Appointments

a. When an indigent defendant is identified in the CCQ/TLET match system or meets other program requirements, the defendant will be assigned to the MHMAC office, and the IDC will promptly appoint counsel after consultation with MHMAC staff. The court in which a case is pending may also refer an indigent defendant to the MHMAC office for assignment and appointment of counsel by the IDC. If a defendant referred to the MHMAC office is not identified in CCQ/TLET match or does not meet other program requirements, the MHMAC office may decline to accept the case for assignment and appointment if:

- i. A conflict of interest exists which has not been waived by the defendant;
- ii. The MHMAC office has insufficient resources to provide adequate representation;
- iii. The MHMAC office is incapable of providing representation in accordance with the rules of professional conduct; or
- iv. The MHMAC office shows other good and sufficient cause for declining the appointment.

- b. An attorney appointed to represent a defendant assigned to the MHMAC program may utilize the services of the MHMAC office case manager.

ATTORNEY SELECTION PROCESS

1. Attorneys shall be appointed to represent indigent defendants from the various appointment lists on a rotating basis, excluding the MHMAC list, which will be managed on an ad hoc basis by the MHMAC Director.
2. The Criminal Court Judges hereby establish the following appointment lists from which counsel for indigent defendants shall be appointed:
 - Misdemeanor general list
 - Misdemeanor jail docket list
 - State Jail Felony list
 - Second and Third Degree Felony list
 - First Degree and 3(g) Felony list
 - Felony Appellate list
 - Mental Health (MHMAC) list
3. Appointment of counsel to represent a defendant in a proceeding on a motion to revoke probation or a motion to adjudicate guilt shall be generated from the list appropriate for the underlying offense.
4. Qualified attorneys may apply at any time for one or more of the appointment lists. From time to time, in their discretion, the Criminal Court Judges will evaluate new applications. Attorneys approved by the judges will be placed on the appropriate appointment lists. Approved attorneys will remain on lists to which they have been assigned until they become disqualified or are removed. Applications for the MHMAC list shall be approved by and at the discretion of the MHMAC Director. No attorney may be placed on the MHMAC appointment list without approval of the MHMAC Director, subject to the oversight and advice of the Criminal Court Judges.
5. The Criminal Court Judges may, on occasion, restrict or limit the number of attorneys on any list or restrict the time period during which applications will be considered.
6. To the extent possible, the Criminal Court Judges or the IDC will appoint the same attorney to all cases against a single defendant in the event a defendant is charged with multiple offenses, including both felonies and misdemeanors.
7. A Criminal Court Judge or the IDC, subject to the Criminal Court Judges' approval, shall have the discretion to appoint any attorney to any particular case, regardless of the rotating appointment system, if the judge or the IDC determines that, because of the facts of the case, the special needs of the defendant, or the special qualifications of the attorney, the interests of justice would be best served by appointing a specific attorney. If this occurs, the next regular appointment will resume with the next attorney on the list as if no discretionary appointment had been made.

Duties of Appointed Counsel

Appointed counsel shall:

1. Acknowledge receipt of the appointment in writing to the IDC within 72 hours;
2. Make every reasonable effort to:
 - a. contact the defendant by the end of the first working day after the date on which the attorney is appointed; and,
 - b. personally interview the defendant at the jail, by video-conference or in appropriate private conference facilities, as necessary, as soon as practicable after the attorney is appointed;
3. Represent the defendant until:
 - a. the charges are dismissed;
 - b. the defendant is acquitted;
 - c. appeals are exhausted; or
 - d. the attorney is relieved of his/her duties by the court or replaced by other counsel after a finding of good cause;
4. Investigate, personally, through the attorney's qualified staff, or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
5. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
6. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
7. Be prepared to try the case to conclusion either with or without a jury;
8. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
9. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case;
10. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client in making appropriate decisions about the case;
11. Personally perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics;
12. Manage the attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case; and,
13. Submit an annual report to the Indigent Defense Commission as set out herein.

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;
 - 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. an attorney may also be removed from the appointment list for any other stated good cause as determined by the Judges hearing the referral.

Procedure for Removal

1. If a Judge, the IDC or the MHMAC Director believes that an attorney has violated any of the provisions listed in paragraph 3 under "Grounds for Removal," the judge, the IDC or the MHMAC Director may refer an attorney who is approved for appointment in both felony and misdemeanor cases to the Criminal Court Judges for removal from the appointment list. If the attorney is approved only for felony cases or only for misdemeanor cases, the referral shall be to the Criminal District Court Judges or to the County Court at Law Judges, respectively. 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 on or removed from the appointment list may be made without such a referral.
2. Upon referral of an attorney for removal, the IDC or the MHMAC Director, as applicable, shall notify the attorney in writing of the referral, and
 - a. inform the attorney of the grounds that form the basis of the referral;
 - b. inform the attorney of the time and place the Criminal Court Judges, or the Criminal District Court Judges, or the County Court al Law Judges, as applicable, will hear the referral; and,
 - c. inform the attorney of his/her right to respond.

3. Any attorney referred for removal to the Criminal Court Judges, or the Criminal District Court Judges, or the County Court at Law Judges, as applicable, may respond to the referral in writing delivered to the IDC or to the MHMAC Director, as applicable, no later than 5 business days before the hearing, and may appear at the hearing in person.
4. The Judges hearing the referral shall deliberate privately following the hearing, and may allow the IDC or the MHMAC Director, as applicable, to be present, at their discretion.
5. At the conclusion of the hearing, if a majority of the Judges hearing the referral determines that grounds for removal exist, they may take any action determined to be appropriate, including but not limited to:
 - a. retaining the attorney on the appointment list(s) without change;
 - b. restricting the attorney to or from certain appointment lists;
 - c. removing the attorney from all appointment lists;
 - d. suspending the attorney from any or all lists;
 - e. placing the attorney on probation, or partial probation, with appropriate terms;
 - f. requiring the attorney to complete appropriate rehabilitative measures, either as a condition of probation or a pre-requisite to re-application to receive appointments;
6. The Presiding Judge shall issue a written order containing the findings and rulings of the Judges hearing the referral, to be maintained in the files of the IDC. The IDC or the MHMAC Director, as applicable, shall notify the attorney of the decision in writing, including a copy of the order.
7. An order of removal shall state in the order the earliest date at which the attorney may apply for reinstatement, if any.
8. The decision of the Judges hearing the referral is final and may not be appealed.

Reinstatement to Appointment List

1. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours if the attorney otherwise meets all other requirements. If CLE hours were acquired after the reporting period for which they will be credited for purposes of reinstatement, the credit so applied may not also be applied to the current year.
2. An attorney who was removed from an appointment list under 3.g. of the “Grounds for Removal” 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.
3. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

Notice of Disqualification

A participating attorney shall notify the IDC promptly, in writing, of any matter that would disqualify the attorney by law, regulation, or rule, or under these guidelines, from receiving appointments to represent indigent defendants.

FEE AND EXPENSE PAYMENT PROCESS

Payments Exclusive of MHMAC Requests

All court-appointed counsel fees and expenses will be paid in accordance with Article 26.05 of the Texas Code of Criminal Procedure, consistent with the following:

1. Court-appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended.

2. Court-appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.

With Prior Court Approval

(a) Appointed Counsel may file with the trial court a pretrial *ex parte* confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:

- (1) The type of investigation to be conducted or the type of expert to be retained;
- (2) Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and,
- (3) An itemized list of anticipated expenses for each investigation and/or each expert.

(b) The Court shall grant the request for advance 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:

- (1) State the reasons for the denial in writing;
- (2) Attach the denial to the confidential request; and,
- (3) Submit the request and denial as a sealed exhibit to the record.

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.

3. An appointed attorney shall complete, sign and submit a request for payment for services rendered and/or a request for payment of expenses, to the court administrator for the Court in which the services were provided, as follows:

- a. for payment for a writ of habeas corpus, within 5 business days following the writ hearing;
- b. for payment on a plea of guilty or nolo contendere, and for payment for the initial client interview, at the time of the plea hearing, unless a pre-sentence investigation is ordered,

in which case the attorney may elect to submit the request for payment at sentencing;
or,

- c. if the request for payment is itemized, within 10 business days of the last service provided to the defendant.

4. Any request for payment submitted untimely will be denied unless good cause for the delay is shown and supported in the record. Any request for payment submitted after 60 days have expired since the last service provided to the defendant will be presumed to have been submitted untimely without good cause.

5. All payments shall be made in accordance with the attached fee and expense schedules, which may be amended from time to time, and which have been adopted by formal action of the Criminal Court Judges, with a copy sent to the Commissioner's Court of McLennan County. These schedules take into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and reasonable and necessary overhead costs and the availability of experts and investigators willing to accept the stated rates. The attached attorney fees **Court-Appointed Attorney Requisition** and the **Investigator and Expert Witness Requisition** forms will be provided for appointed attorneys, who must submit these forms for payment.

Payments of MHMAC Requests Only

1. All requests for compensation and reimbursement for MHMAC appointments shall be submitted to the MHMAC Director, who shall promptly review the request and either approve or disapprove the amount requested. If the MHMAC Director disapproves a request, the director may, in the Director's discretion, forward the request to the presiding Judge. Upon review, the presiding Judge, will either approve the amount requested or take no action.

2 Appointed attorneys will consult with the MHMAC Director prior to incurring expenses the attorney deems to be reasonable and necessary, including expenses for investigation and for mental health and other experts. The MHMAC Director shall complete and submit requests for compensation of experts appointed to conduct competency, sanity, or other psychological exams. Requests for compensation of expert witnesses in MHMAC cases shall not exceed \$2,000.00 unless approved by the presiding judge. In all other cases, requests for compensation of services rendered by a private investigator or expert must be certified to, signed, and submitted by the attorney of record, even if the auditor is to release payment directly to the investigator or expert.

JUDICIAL INDEPENDENCE

No provision of this plan may be construed to divest any individual Judge of the ability to take any action the Judge believes is immediately necessary in the interest of justice, to protect the rights of the accused, or to protect the public.

APPROVED and SUBMITTED:

Hon. Ralph Strother, Judge
19th District Court
Administrative Presiding Judge

Hon. Brad Cates, Judge
County Court at Law No. Two
Administrative Presiding Judge

PLAN DOCUMENTS

1. Magistrate's Warning [2 pages];
2. Application for Court Appointment of Attorney [1 page];
3. Election Declining Court-Appointed Counsel [1 page];
4. Application for Court Appointment List - District Courts [2 pages];
5. Application for Exception to Qualifications to Receive District Court Appointments [1 page];
6. Application for Court Appointment List - County Courts at Law [2 pages]; ***[amended 12/3/2020]***
7. Findings of Ineligibility for Court Appointment of Attorney and Order Denying Application [1 page];
8. Findings on Application for Court Appointment of Attorney and Order Appointing Counsel [1 page];
9. Felony Fee Schedule [1 page];
10. Misdemeanor Court-Appointed Attorney fee schedule [1 page]; ***[amended 12/3/2020]***
11. Court-Appointed Attorney Requisition [1 page]; ***[deleted 12/3/2020]***
- 11-A. Court-Appointed Attorney Felony Requisition [1 page]; ***[added 12/3/2020]***
- 11-B. Court-Appointed Attorney Misdemeanor Requisition [1 page]; ***[added 12/3/2020]***
12. Investigator and Expert Witness Requisition [1 page];
13. MHMAC Application and Policies [___ page?] ***[added 12/3/2020]***
14. MHMAC Appointed Attorney Requisition [1 page?] ***[added 12/3/2020]***