**Bexar County Appellate Public Defender’s Office**

**Indigent Defense Plan**

**October 23, 2013**

This plan is submitted to the Bexar County Commissioners Court under Article 26.044 (b-1), Code of Criminal Procedure. The plan is also made part of the Bexar County Indigent Defense Plan submitted to the Texas Indigent Defense Commission under Section 79.036 of the Government Code.

1. Duties of the Office.

The Bexar County Appellate Public Defender’s Office (APD) was created by the Commissioners Court to provide legal representation for indigent appellants in Bexar County. The APD represents appellants in felony, misdemeanor, and juvenile cases. The APD is appointed by authority of Article 26.04(f), Code of Criminal Procedure. The APD does not represent appellants in death-penalty cases.

1. Oversight Board.

The Bexar County Public Defender Oversight Board, established under Article 26.045, Code of Criminal Procedure, is not presently active. The APD operates as part of the Judicial Services Department and is a “governmental entity” as defined by Article 26.044(a)(1) and (a)(4)(A)(i), Code of Criminal Procedure. The APD anticipates that new members will be appointed to the Oversight Board during the current fiscal year, and that the Board will resume its duties which include making recommendations to the Commissioners Court for the selection of a Chief Public Defender.

1. The Budget.

The budget for the APD for the 2013-14 fiscal year is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **APDO** | | | |
| **2014** | | | |
| **Approved** | | | |
| 50000-0-Salary Regular | | $227,796 | |
| 50202-0-Life Insurance | | $532 | |
| 50204-0-Health Insurance | | $43,645 | |
| 50208-0-Unemployment Insurance | | $569 | |
| 50210-0-Workers Compensation | | $1,400 | |
| 50212-0-Retirement | | $28,201 | |
| 50245-0-Social Security & MD | | $17,426 | |
| **Subtotal:** | | **$319,570** | |
| 51000-0-ND-Training/Cert/Registration fees | | $1,345 | |
| **Subtotal:** | | **$1,345** | |
| 52024-0-Membership Fees | | $70 | |
| 52040-0-Copier Rental & Expense | | $2,350 | |
| 52160-0-Telephone and Internet Service | | $4,500 | |
| **Subtotal:** | | **$6,920** | |
| 53110-0-Office Supplies | | $2,000 | |
| 53115-0-Postage | | $1,000 | |
| 53120-0-Books and Periodicals | | $500 | |
| **Subtotal:** | | **$3,500** | |
| 99100-0-Program Changes | $7,629 | | Adjustment for addition of Chief Public Defender position. |
| **Subtotal:** | | **$7,629** | |
| **Grand Total:** | | **$338,964** | |

1. Personnel Positions.

The APD consists of a Chief Appellate Public Defender, two Assistant Appellate Public Defenders, and a paralegal. The Chief Appellate Public Defender position is presently vacant, but will be filled during the current fiscal year.

1. **Chief Appellate Public Defender:**

Job Description:

1. Assigns, directs and controls the work activities of staff attorneys and support staff.
2. Develops organizational practices and standard operating procedures.
3. Makes case assignments.
4. Monitors case assignments and provides assistance on complicated or high-visibility appeals.
5. Maintains a reduced caseload and provides backup to attorneys on leave.
6. Is departmental authority on personnel and budget matters.
7. Serves as departmental head in communications with other county entities.
8. Interacts with state and local bar associations and organizations, and serves on committees involved in the justice system.
9. Corresponds with the Texas Indigent Defense Commission.
10. Screens all cases for conflicts of interest.
11. Will answer to the Oversight Board when created, and will implement standards and practices as approved by the board.

Education and Experience:

1. Graduation from accredited law school with a Doctorate of Jurisprudence.
2. At least three years of substantial experience in criminal law, with at least twenty criminal appellate briefs filed.
3. Member in good standing of the State Bar of Texas.
4. Otherwise meet all experience and licensing requirements under Article 26.044(f), Code of Criminal Procedure.
5. **Assistant Appellate Public Defender:**

Job Description:

1. Under the supervision of the Chief Appellate Public Defender, provides legal representation to indigent appellants.
2. Obtains and reviews the record on appeal.
3. Researches and investigates appellate issues.
4. Meets with clients as necessary.
5. Prepares and files appellate briefs and other pleadings in the trial and appellate courts.
6. Maintains written correspondence with clients during the appellate process.
7. Provides advice on the merits of proceeding with or dismissing appeals based on investigation of meritorious issues.
8. Prioritizes and organizes workload to meet deadlines.
9. Maintains awareness of new court decisions, laws, rules and regulations.
10. Attends conferences and stays current on the law.
11. Maintains basic ability to use standard word-processing software and perform electronic legal research.

Education and Experience:

1. Graduation from accredited law school with a Doctorate of Jurisprudence.
2. Three or more years of experience as a criminal defense attorney specializing in appellate matters, or as a prosecutor, or as a clerk for a state or federal judge.
3. Prior appellate work in Texas state courts is required.
4. Member in good standing of the State Bar of Texas.
5. **Paralegal:**

Job Description:

1. Under direct supervision of attorneys, is responsible for general secretarial duties.
2. Provides administrative assistance to staff attorneys.
3. Opens client files and files documents in client files.
4. Drafts legal documents and correspondence for attorneys.
5. Maintains statistics and compiles reports, including caseload information, for APD.
6. Requests and obtains appellate records from court reporters and court clerks.
7. Provides general case-status information to clients.
8. Responds to general requests for information from judges, court staff, clients, attorneys, and other members of the public.
9. Maintains calendar for tracking due dates of appellate briefs and related documents.
10. Orders supplies.
11. Maintains work and hours information for APD as required for payroll and human resources purposes.
12. Performs additional duties as required.

Education and Experience:

1. High School diploma or GED certificate.
2. Good knowledge of office procedures.
3. Prior office experience in a law office or government legal office.
4. Must have good working knowledge of commonly used word-processing software and common office equipment.
5. Maximum Allowable Caseloads.

As a general rule, the maximum annual caseload allowable is 25 appeals per attorney. This is consistent with the national standard developed in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals, commonly referred to as the NAC standards. NAC standard 13.12, titled “Workload of Public Defenders” establishes the 25 appeals per year limit. Texas has yet to establish a standard for the maximum caseload allowable for public defender attorneys.

A “case” for this purpose includes only cases in which a merit brief is filed by the APD attorney. The appeal is considered “completed” for purposes of the caseload count when the merit brief is filed with the appellate court. Cases in which *Anders* briefs are filed (meaning that no meritorious issues can be identified to raise on appeal) and procedurally defaulted cases (meaning that there is a jurisdictional defect such as a late notice of appeal, or cases in which the defendant waived the right of appeal as part of a plea bargain) are not counted in calculating attorney caseloads.

The caseload limit is not absolute. The Chief Appellate Public Defender will assess the complexity of each case when it is assigned to a staff attorney. An individual staff attorney may be allowed to exceed the annual caseload limit if his or her caseload includes a significant portion of cases with factors such as: 1) an appellate record that is not lengthy; 2) non-novel, frequently recurring legal issues that the attorney has briefed before; or 3) cases with few possible appellate issues, such as appeals taken from guilty pleas. The staff attorney’s experience and pending deadlines will also be taken into consideration when making the case assignment. The ultimate goal is to ensure that each client receives a high-quality defense.

If the Chief Appellate Public Defender does determine that accepting additional appointments would violate the maximum allowable caseload standards, the procedure under Article 26.044(j-1), Code of Criminal Procedure, will be followed. The chief will file a written statement with the trial court stating that the appointment has been refused because the maximum allowable caseload for the APD is exceeded. The trial court will then determine if the chief “has demonstrated adequate good cause for refusing the appointment.” If so, the trial court may reassign the appeal to the next attorney available on the appointment “wheel,” or otherwise as the Bexar County local rules may require.

1. Personnel Training.

The Bexar County Indigent Defense Plan requires attorneys who accept appellate appointments in felony cases to complete at least twelve hours a year of continuing legal education (CLE) in criminal law or procedure. The APD attorneys exceed that minimum requirement.

Training for the APD attorneys includes mandatory attendance at the Rusty Duncan CLE, presented by the Texas Criminal Defense Lawyers Association. Each attorney earned a maximum of 18 CLE hours, including 2 hours of ethics at that seminar in 2013. The fees for that seminar are included in the office’s budget. The attorneys will also attend the free CLE for public defenders presented on the day before the Rusty Duncan seminar.

There are also free or low-cost CLE events available to APD attorneys through the San Antonio Criminal Defense Lawyers Association, and the attorneys are encouraged to attend.

Both attorneys now employed by the APD have authored an article for presentation at a CLE event or publication in a legal journal during the current fiscal year.

The paralegal and one staff attorney will attend a seminar presented by the Texas Indigent Defense Commission in October 2013.

1. Anticipated Overhead Costs.

The overall budget for the 2013-14 fiscal year is presented above. The amounts allocated to overhead include $1,200.00 for Lexis legal research services and $3,300.00 for Defender Data case-management software and off-site, secure data storage. The total amount of anticipated overhead costs for the year is $10, 420.00.

1. Investigators and Expert Witnesses.

The APD handles appellate cases only, and does not handle death-penalty cases. The office rarely needs the services of an investigator. If an investigator is needed, the APD will file a motion with the trial court and ask that an investigator be appointed from the list maintained by the Bexar County District Court Administrator. The APD will also seek appointment of an expert witness by motion to the trial court in the very unlikely event that the assistance of an expert witness is needed.

1. Policy Regarding Conflict of Interest.

Under Article 26.044(j)(1), Code of Criminal Procedure, the APD may not accept an appointment if a conflict of interest exists that has not been waived by the client.

The paralegal uses the APD’s database software to conduct an initial check for conflicts arising from the representation of co-defendants. The Chief Appellate Public Defender will also screen each new appointment for a potential conflict of interest. A non-exclusive list of potential conflicts includes:

1. The APD is appointed to represent co-defendants.
2. The defendant was represented at trial by an attorney subsequently hired by the APD, and the client asserts that trial counsel provided him with ineffective assistance.
3. The APD attorney must assert for the first time in an appeal that another client of the office committed perjury at trial.
4. Two or more clients entered guilty pleas or advanced defenses at trial that were not inconsistent, but wish to assert on appeal that one or more of the clients was more culpable than the others.

If a potential conflict of interest is identified, it will be brought to the client’s attention by the APD attorney. If the client does not wish to waive the potential conflict in writing, or if the conflict is of a nature that it cannot be effectively waived, the procedure under Article 26.044(j-1) of the Code of Criminal Procedure will be followed: The Chief Appellate Public Defender will file with the trial court a written statement that the appointment must be refused because a conflict of interest exists. The conflict will be identified in the motion if permissible under the ethical rules applicable to Texas-licensed attorneys. The trial court will then determine if the Chief Appellate Public Defender “has demonstrated adequate good cause for refusing the appointment.” If good cause is found for refusing the appointment, the trial court may then reassign the appeal to the next attorney available on the appointment “wheel,” or otherwise as the Bexar County local rules may require.

1. Procedure for Appointing the APD.

The APD will be appointed to represent indigent defendants in the Bexar County District Courts in accordance with the procedure set forth in Bexar County Criminal District Court Rule 5.17(n). If the APD refuses the appointment pursuant to the Code of Criminal Procedure Article 26.044(j) and (j-1), the trial court may appoint a lawyer from the next five names on the appropriate Appellate list, as provided by the Criminal District Courts Administration Office. See Bexar County Criminal District Court Rule 5.17(n).

The APD will be appointed to represent defendants in misdemeanor cases under the following procedure:

Any defendant charged with a misdemeanor offense who 1) wishes to appeal their conviction, 2) has been found to be indigent, and 3) who requests a court appointed attorney, shall be assigned the Bexar County Public Defender's Office.

Once notice of appeal has been filed by the trial counsel, the trial court must enter an Order Appointing the Appellate Public Defenders Office until the termination of the appeal process. The County Court at Law judges may, from time to time, adjust the percentage of cases received by the APD. The APD may be removed from a specific list by the judges, if it is determined that the office will no longer handle that category of cases. In such cases, the public defender’s appointment rates may be increased for the other categories of offenses to maintain an adequate workload.

The APD may refuse to accept appointment to a case, if 1) a conflict of interest exists, 2) the office has insufficient resources to provide adequate representation, 3) the office is incapable of providing representation in accordance with the rules of professional conduct, 4) the acceptance of the appointment would violate the maximum allowable caseloads established at the public defender’s office, or 5) the office shows other good cause for refusing appointment under Article 26.044(j), Code of Criminal Procedure. The procedure set forth in Article 26.044(j-1), Code of Criminal Procedure, will be followed in the event the APD identifies a reason for refusing the appointment. The trial court may then reassign the appeal to the next attorney available on their Misdemeanor appointment “wheel” or Misdemeanor appellate “wheel.”