Harris County Office of Managed Assigned Counsel

**Plan of Operation**



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# Definitions

Unless otherwise specified, the following definitions apply to this Plan of Operation.

1. “MAC Office” or “Office of Managed Assigned Counsel” mean the Harris County Office of Managed Assigned Counsel.
2. “Attorney” or “Participating Attorney” means any lawyer who receives appointments from the Harris County Office of Managed Assigned Counsel. The MAC Office exists to assist and support Attorneys in their representation of Clients.
3. “Client” means any person whose case is assigned to an attorney accepting appointments by the Harris County Office of Managed Assigned Counsel. While generally the MAC Office does not have an attorney-client relationship with Clients, the MAC Office exists to support and serve the Clients.
4. “Community” is a broader term than client or former client, encompassing those that are or may be negatively impacted by the criminal justice system, be they family, friends, neighbors, co-workers, religious leaders, organizers, advocates, service providers, or any other person or organization who directly or indirectly supports a client.

# Introduction

The Office of Managed Assigned Counsel was established to enhance the quality of representation of indigent people accused of crimes in Harris County. The MAC Office is required to:

1. make the appointment and payment process for attorneys, investigators, and experts independent of the judiciary;
2. monitor and control attorney caseloads to ensure attorneys have adequate time to effectively and zealously represent their clients;
3. ensure quality and consistency in representation; and
4. and implementing a fair and reasonable appointment process.

The MAC Office will achieve these goals by establishing a fair, impartial appointment system that ensures attorneys representing the accused will have access to the resources, training, and support needed to ensure holistic, client-centered defense.

The Office of Managed Assigned Counsel exists to serve people who face criminal charges, are declared indigent, and whose cases require an appointment to a private lawyer. The MAC Office will serve these clients and the community by helping attorneys meet their clients’ needs, both inside and outside of the courtroom, centering each client as the focus of the attorney-client relationship and tailoring services to the individual client. The MAC Office will support attorneys through training, mentorship, litigation support resources including investigators and social workers, through access to immigration advice, and through other components the MAC Office will develop as it grows.

This Plan of Operation is intended to fulfil the MAC Office’s statutory obligations under Article 26.047(c) of the Texas Code of Criminal Procedure and our contractual obligations set forth in Texas Indigent Defense Commission Grant Number 212-20-D06.

# Operating Budget and Anticipated Costs

|  |  |  |
| --- | --- | --- |
| |  |  | | --- | --- | | **Costs** | **Amount** | |
| |  |  | | --- | --- | | Salaries  (Maximum salaries for 20 employees: Executive Director, Deputy Director, Misdemeanor Chief/Training Director, *Juvenile Chief/Training Director*\*, Office Administrator, Program Administrator, 2 Administrative Assistants, 4 Resource Attorneys, IT Systems Administrator, Immigration Attorney, *Community Engagement & Recruiting Coordinator*\*, Chief Investigator, Social Worker Supervisor, 3 Social Workers) | ($2,030,184.00) | |
| |  |  | | --- | --- | | Fringe and Benefits  (Includes FICA/Medicare, workers compensation, unemployment insurance, and retirement. Includes fringe and benefits for the 20 positions in the salaries section. | ($778,748.37) | |
| |  |  | | --- | --- | | Travel and Training  (Includes professional memberships, continuing education programs, and travel) | ($18,500.00) | |
| |  |  | | --- | --- | | Startup and Equipment  (Includes computers and equipment, including monitors, docking stations, and accessories; phones; furniture, including desks, task chairs, and guest chairs) | ($105,588.00) | |
| |  |  | | --- | --- | | Supplies  (Includes office supplies, custom printing, signage, postage, and equipment rentals such as copiers and/or fax) | ($12,100.00) | |
| |  |  | | --- | --- | | Contract Services  (Includes case management software development and contract services) | ($188,000.00) | |
| |  |  | | --- | --- | | Indirect Costs | ($0) | |
| |  |  | | --- | --- | | **Total Projected Costs** | **($3,133,120.37)** | |
| |  |  | | --- | --- | | **Funding** | **Amount** | |
| |  |  | | --- | --- | | Total Amount Funded by TIDC FY 2021 | $2,172,855.00 | |
| |  |  | | --- | --- | | Initial Planned Harris County Match Funding FY 2021 | $543,214.00 | |
| |  |  | | --- | --- | | Anticipated Additional County Funding FY 2021  (Includes additional funding needed for fringe benefits, office equipment, and Harris County longevity benefits) | $417,051.37 | |
| |  |  | | --- | --- | | **Total Anticipated Funding, All Sources FY 2021** | **$3,133,120.37** | |

\* The Juvenile Chief / Training Director and Community Engagement & Recruiting Coordinator positions are not part of the TIDC grant and are fully funded by Harris County.

# Staffing and Position Descriptions

## Executive Director

Duties and Responsibilities:

1. Developing and enforcing the policies and procedures of the Office of Managed Assigned Counsel, including the creation of personnel procedures and guidelines
2. Directing the management of the participating defense attorneys
3. Developing and maintaining resources to better serve the program
4. Actively monitoring the overall caseload and performance of participating defense attorneys
5. Approving attorneys to be on the various appointment lists pursuant to CCP 26.047(f)(3)
6. Managing the day to day operations of the Office of Managed Assigned Counsel
7. Developing and maintaining the budget of the Office of Managed Assigned Counsel
8. Liaising with the judiciary, budget management department, and other justice stakeholders
9. Overseeing the private appointed legal representation of indigent defendants in Harris County
10. Working with elected officials and policy-making entities to accomplishing the objectives of the Office of Managed Assigned Counsel
11. Preparing a written plan of operation as required by Article 26.047(c) of the Texas Code of Criminal Procedure and directing the administrative and operation functions of the office consistent with the stated goals of the Office of Managed Assigned Counsel
12. Approving vouchers for attorneys, investigators, and experts
13. Overseeing staff, including hiring, training, performance evaluations, dissemination of information regarding ethics issues such as confidentiality, privilege, and waivers, and the administration of disciplinary actions and dismissals
14. Preparing and presenting annual reports on the operation of the office to Harris County Commissioners
15. Preparing and presenting quarterly operational and monthly financial reports on the expenditures of the indigent resources to the Board of Directors
16. Establishing policies and procedures relating to the administration of indigent defense in conjunction with the Board of Directors and developing recommendations for the Board
17. Facilitating the development, training, and education of assigned counsel by providing Continuing Legal Education (“CLE”) program, implementing a training curriculum consistent with current trial and investigative techniques including ethics related to criminal law, and establishing a mentoring program
18. Developing the processes for application, acceptance, renewal, and removal of assigned counsel
19. Responding to inquiries and complaints and investigating such complaints
20. Representing the office on various committees and work groups and participating in outreach to the community at various governmental, judicial and civic functions

## Deputy Director

Responsibilities and Duties

1. Supervising holistic programs, support programs, and related staff, including the Program Administrator, Chief Investigator, Immigration Attorney, Social Worker Supervisor, and any additional holistic or support components that may be added to the Harris County Office of Managed Assigned Counsel
2. Creating and monitoring evaluation procedures for internal staff and participating appointed attorneys
3. Creating and maintaining an appointment system that ensures cases are reasonably and impartially allocated to attorneys in accordance with the MAC’s caseload standards
4. Managing a case management system that efficiently accommodates essential aspects of a case, including but not limited to documents, investigation, vouchers, and any other support resources requested by participating appointed attorneys
5. Studying, monitoring, and generating reports regarding the effectiveness of holistic defense services
6. Drafting grants that are consistent with the needs of the MAC Office
7. Establishing guidelines, best practices, and assessing the needs of both attorneys and clients, which include legal guidance regarding applicable legal and ethical standards of defense services
8. Engaging with the community to promote holistic defense services

## Misdemeanor Chief and Training Director

Responsibilities and Duties

1. Supervising coordination of misdemeanor court assignments to participating appointed attorneys
2. Supervising misdemeanor division resource attorneys
3. Managing contracts with participating appointed attorneys
4. Providing general management assistance to the Executive Director
5. Developing an internal training program for participating appointed attorneys, a mentorship program for new attorneys interested in indigent defense, and a law clerk/internship program
6. Providing leadership and vision within the misdemeanor division of the Harris County Office of Managed Assigned Counsel
7. Assisting the Deputy Director in evaluating the performance of attorneys, developing a new case management system, and determining minimum qualifications for participating attorneys.

## Juvenile Chief and Training Director

Responsibilities and Duties

1. Supervising coordination of juvenile court assignments to participating appointed attorneys
2. Supervising juvenile division resource attorneys
3. Managing contracts with participating appointed attorneys
4. Providing general management assistance to the Executive Director
5. Developing an internal training program for participating appointed attorneys, a mentorship program for new attorneys interested in indigent defense, and a law clerk / internship program
6. Providing leadership and vision within the juvenile division of the Harris County Office of Managed Assigned Counsel
7. Assisting the Deputy Director in evaluating the performance of attorneys, developing a new case management system, and determining minimum qualifications for participating attorneys.

## Office Administrator

Responsibilities and Duties

1. Providing senior-level professional assistance to the Harris County Office of Managed Assigned Counsel
2. Overseeing high-level administrative operations of the MAC Office, including HR functions, budget, and procurement
3. Assigning and supervising the work of other department staff, including but not limited to all administrative assistants and the IT Systems Technician
4. Reviewing and interpreting Harris County and MAC Office policies and procedures, and making independent administrative decisions as appropriate

## Program Administrator

Responsibilities and Duties

1. Providing senior-level professional assistance for the Harris County Office of Managed Assigned Counsel’s external components at the direction of the MAC leadership team, including but not limited to assistance with voucher approval, assistance with case management input, and application verification for candidates interested in joining the appointment list
2. Managing contracts between the MAC Office and participating appointed attorneys
3. Overseeing high-level administrative operations of the MAC Office including but not limited to office management and HR functions in the absence of the Office Administrator

## Resource Attorney

Responsibilities and Duties

1. Serving as the primary liaisons between the Office of Managed Assigned Counsel and individual courts on behalf of participating appointed attorneys
2. Assisting with managing appointments, assisting with fee voucher process, monitoring caseloads among participating appointed attorneys, and assisting with problem resolution in discovery, litigation, or trial issues
3. Providing resources, support, and oversight of the attorneys qualified to receive appointments.
4. Performing conflict resolution on behalf of the attorneys between attorneys and clients, prosecutors, or judges, should they arise
5. Serving as first or second chair counsel on cases assigned to participating appointed attorneys receiving appointments from the MAC Office when necessary
6. Monitoring and maintaining legal resources made available through the MAC Office for participating appointed attorneys serving clients
7. Assisting the Division Chiefs and Training Director with training duties and Deputy Director with operational duties as needed.

## Immigration Attorney

Responsibilities and Duties

1. Managing referral system by providing written *Padilla* advisory memoranda to participating appointed attorneys about the potential immigration consequences of criminal offenses and dispositions
2. Assisting Division Chiefs by providing training guidance and developing continuing education programs for attorneys
3. Providing periodic updates to attorneys on legal changes and emerging issues in the field of immigration law

## Chief Investigator

Responsibilities and Duties

1. Managing the contracts of investigators performing investigative services on behalf of attorneys appointed through the MAC Office
2. Performing direct services such as contact with clients, witnesses, and law enforcement; gathering evidence; and obtaining discovery
3. Testifying in court in appropriate circumstances
4. Assisting Division Chiefs and Training Director by providing continuing education programs and training attorneys to effectively use investigators
5. Assisting Division Chiefs and Training Director by providing trainings on investigative techniques to investigators
6. Creating and managing internship and externship programs for college students interested in defense investigations
7. Advising staff of procedural changes relating to investigation and implementing policies and procedures related to investigative resources

## Community Engagement and Recruiting Specialist

Responsibilities and Duties

1. Responsible for developing a participatory defense model as a holistic service offered through the MAC Office to support participating appointed attorneys using mitigation through family involvement, systemic awareness of legal issues surrounding a client’s case, and organizing community support, if necessary, to advance clients’ narratives
2. Leading efforts in finding event sponsors and raising funds for community causes and office needs,
3. Maintaining a healthy social media presence on behalf of the MAC Office
4. Organizing events that will promote the MAC Office’s presence in the community
5. Visiting and fostering relationships with law schools and professional legal organizations, both locally and nationally, to recruit qualified candidates for employment with the MAC Office and for the MAC Office’s mentorship programs
6. Developing and overseeing the implementation of equitable policies and practices designed to promote diversity and inclusion through recruiting, hiring, mentorship, advancement, and retention

## IT Systems Administrator

Responsibilities and Duties

1. Serving as the first line of technology troubleshooting
2. Serving as the technical liaison to Universal Services for assistance with supporting the Harris County Office of Managed Assigned Counsel
3. Assisting with developing and maintaining an efficient attorney data reporting and voucher processing system
4. Installing, configuring, operating, and maintaining systems hardware, software, and related infrastructure
5. Training and assisting MAC Office personnel in computer operations, software, case preparation, and presentations.

## Social Worker Supervisor

Responsibilities and Duties

1. Managing and assisting social workers, social work interns, client advocates, and other staff members filling similar roles
2. Developing plans for linking clients to services throughout Harris County, in support of the criminal defense team. The plans and services will attempt to address life situations that, if mitigated, may improve a client’s opportunity for improving their lives and providing alternatives to incarceration and sentencing
3. Working with the Deputy Director and Program Administrator to create efficient systems to request client services
4. Establishing proper caseload limits for social workers
5. Training social workers to provide services to clients, such as helping participating appointed attorneys identify services within the community, housing, and other available resources in order to help reduce the collateral consequences of the criminal case life cycle
6. Working with the Division Chiefs and Training Director to host periodic continuing education programs on compassion fatigue and self-care for MAC Office employees and participating appointed attorneys
7. Helping create and monitor internship and externship programs for college students interested in defense social work

## Social Workers

Responsibilities and Duties

1. Assisting participating appointed attorneys by implementing plans to address life situations that, if mitigated, may improve clients’ opportunities for improving their lives and providing alternatives to incarceration and sentencing
2. Connecting clients to available services within the community
3. Maintaining a persistent awareness of resources available within the community
4. Maintaining routine communication with key contacts in the network of social work resources in Harris County
5. Making out-of-office, face-to-face and collateral contact with clients, witnesses, and law enforcement as required
6. Conducting mitigation investigations and developing mitigation reports to improve case outcomes.
7. Testifying on behalf of clients, when needed

## Administrative Assistant

Responsibilities and Duties

1. Answering phones, returning attorney and client calls, and responding to client inquiries in a timely manner
2. Assisting the Program and Office Administrators with office-critical functions such as purchasing and procurement, payroll, phone and calendar management, office supply management, organization of meetings and conference calls, and disseminating reports
3. Interfacing with the public, attorneys, clients, and Harris County employees for general purposes related to the operation of the MAC Office
4. Assisting MAC Office staff as needed

# Caseload Requirements for Attorneys Receiving Appointments

To be effective, an indigent defense system must ensure that “defense counsel’s workload is controlled to permit the rendering of quality representation.”[[1]](#footnote-2) Excessive caseloads impair an attorney’s ability to effectively represent each individual client and can cause a lawyer to make important decisions in a client’s case for non-strategic reasons.[[2]](#footnote-3) Criminal cases require significant investments of an attorney’s time across a wide variety of potential time commitments, including interviewing and communicating with clients, family members, and witnesses; conducting investigation and legal research; preparing for hearings and trials; filing motions, obtaining discovery, and securing litigation support resources. These various time commitments may result in lawyers without support staff taking on multiple roles during a case. The *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission* reports that attorneys who represent indigent clients traditionally spend only a fraction of the time warranted by the cases they handle.[[3]](#footnote-4)

## Maximum Attorney Caseloads

To the extent possible, the Office of Managed Assigned Counsel will make every effort to adhere to maximum caseloads based on the best practices and current evidence-based standards recognized by indigent defense organizations. Currently, the best practices and evidence-based standards are reflected by the publication *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission*.[[4]](#footnote-5) According to the report, annual caseload maximums should be:

|  |
| --- |
| ***Criminal Cases*** |
| * 77 first degree felonies, |
| * 105 second degree felonies, |
| * 144 third degree felonies, |
| * 174 state jail felonies, |
| * 216 Class A misdemeanors, |
| * 236 Class B misdemeanors, |
| * or an equivalent combination of cases. |
| ***Juvenile Cases – With Investigator Support*** |
| * 230 conduct indicating a need for supervision/misdemeanors, |
| * 127 non‐determinate sentence/non‐certification felonies, |
| * 36 determinate sentence/certification felonies, |
| * or an equivalent combination of cases. |
| ***Juvenile Cases – Without Investigator Support*** |
| * 210 conduct indicating a need for supervision/misdemeanors, |
| * 108 non‐determinate sentence/non‐certification felonies, |
| * 30 determinate sentence/certification felonies, |
| * or an equivalent combination of cases. |

## Weighing Other Types of Cases

The MAC Office anticipates managing many different types of cases that lack clearly recommended caseload standards, including fugitive dockets, specialty dockets, revocation hearings, hearings to adjudicate guilt, appeals, post-conviction writs of habeas corpus, and other cases. The MAC Office will make all reasonable efforts to measure these caseloads in a manner consistent with the MAC Office’s caseload management standards, determining caseload limits by providing comparable valuation of cases based on their relative complexity and duration.

## Measuring Attorney Caseloads

An Attorney’s maximum caseload will be calculated using an attorney’s total caseload, including retained cases, appointed cases, and non-juvenile or non-criminal cases, with cases weighted into an equivalent number of Class B misdemeanor cases. The MAC Office will use the data that it determines best reflects an Attorney’s caseload, whether it be looking at closed cases or new cases over a rolling period, or whether it attempts to extrapolate total caseload from an attorney’s current active caseload. The MAC Office may periodically assess Attorneys’ out-of-county caseloads and include this information when calculating the Attorneys’ total caseloads. The MAC Office will not require attorneys to submit their caseloads, but will track caseloads using the tools and data available to the MAC Office.

## Controlling Attorney Caseloads

The MAC Office will primarily control caseloads by requiring the appointment system to skip Attorneys whose caseloads exceed permissible maximum caseloads when possible. The action of skipping an Attorney shall be documented along with the Attorney’s current caseload. When there are no available Attorneys below maximum caseloads eligible to participate in intake, the MAC Office will request Attorneys with the lowest caseloads to participate in case intake.

Generally, Attorneys may take a reduced caseload according to preference. For example, the Attorney may request fewer appointments due to personal preference or a planned vacation. However, when there are no available Attorneys below maximum caseloads eligible to receive appointments, the MAC Office may request Attorneys who voluntarily participate in fewer intake periods as a matter of preference to participate in case intake to alleviate the shortage of Attorneys eligible to do so.

The MAC Office may limit an Attorney’s ability to participate in case intake in consideration of the Attorney’s level of experience, while an Attorney has an unmanageable caseload, if Attorney is neglecting clients, or for any other reason that may impact the ability of the Attorney to effectively represent Clients. Any reduction to an Attorney’s caseload will be documented.

## Daily Misdemeanor Caseloads

Generally, an Attorney may receive a maximum of five new Clients during any single misdemeanor docket. However, if one of those Clients is not present in Court on the day the docket, the Attorney may receive a maximum of six new Clients during the docket. If two or more of those Clients is not present in Court on the day the docket, the Attorney may receive a maximum of seven new Clients during the docket.

## MAC Resource Attorneys and Other Staff Attorneys

MAC Office staff attorneys (including Resource Attorneys) who meet the experience requirements for inclusion on an appointment list may handle a limited caseload in cases as part of their duties as a MAC Office employee. The appointment should advance the MAC Office’s mission to support Attorneys, to train Attorneys placed in the Mentorship program, and to ensure the MAC Office is providing practical, relevant, up-to-date guidance to Attorneys. Staff attorneys may not receive any additional payment (outside of their salary) for the representation of Clients.

# General Requirements for Inclusion on the Appointment List

To be effective, an indigent defense system must ensure that “defense counsel’s ability, training, and experience match the complexity of the case.”[[5]](#footnote-6) Successful indigent defense requires:

1. ensuring attorneys receive appropriate training in criminal law;
2. ensuring attorneys participate in relevant continuing education classes; and
3. ensuring attorneys have the required experience to match the severity or complexity of a case.[[6]](#footnote-7)

State laws and regulations implement these requirements, mandating that attorneys receiving appointments are qualified to handle a client’s specific case,[[7]](#footnote-8) must meet general continuing education requirements,[[8]](#footnote-9) and must meet specific continuing education requirements to be eligible to represent indigent people in criminal cases.[[9]](#footnote-10)

## Qualifications and Requirements Applicable to All Attorneys

Each Attorney must initially meet the general requirements for inclusion on any appointment list and the requirements for any specific Appointment List the Attorney wishes to join. All Attorneys have ongoing duties, training requirements, evaluation requirements, and must notify the MAC Office upon the occurrence of certain events.

### Initial Requirements for Inclusion on Any Appointment List

1. Be eligible to practice law in Texas and maintain good standing with the State Bar of Texas;
2. Not have been employed by a prosecuting agency for the preceding 90 days;
3. Maintain a telephone number and a private meeting space so the attorney can conduct confidential meetings and discussions with Clients;
4. Maintain an email address to which the MAC Office may send official communication;
5. Maintain a physical address for official communication from the MAC Office;
6. Agree to the expectations and duties outlined in this document and the agreement between the Attorney and the MAC Office; and
7. Meet any specific requirements for inclusion in a particular Appointment List

#### Additional Requirements for Inclusion on the Misdemeanor Appointment List

In addition to the general requirements for inclusion on the appointment list, all attorneys seeking to join the MAC appointment list for misdemeanor cases should have:

1. At least one year of work experience practicing criminal law;
2. At least 10 hours of criminal-defense related continuing education (CLE) in the 12 months prior to applying to be added to the appointment list;
3. Relevant practical experience and training. Examples of types of practical experience and training that can be considered for inclusion on the appointment list include:
   1. Experience in the practice of criminal law, which may include :
      1. Conducting a criminal jury trial or portions of a jury trial, including voir dire, openings, cross examinations, direct examinations, and closing arguments, as first or second chair,
      2. Conducting contested evidentiary hearings in a criminal case, and
      3. Additional years of experience practicing criminal law;
   2. Additional training and education related to criminal law and criminal defense:
      1. Intensive criminal trial skills training,
      2. Participation in a law school criminal defense clinic, and
      3. Additional intensive CLEs related to criminal defense; or
   3. Relevant work experience, including work experience as a paralegal, investigator, client advocate in a criminal defense practice or experience providing direct legal services to clients.

### Ongoing Duties Required of Every Attorney

Every attorney who agrees to accept appointments through the MAC Office will be expected to fulfill certain duties

1. Agree to zealously represent each Client until the case is disposed or the Attorney no longer represents the Client;
2. Provide the MAC Office an update whenever the Attorney’s contact information changes;
3. Acknowledge the Attorney’s duties and expectations prior to receiving any Clients;
4. Adhere to the standards set forth in the *Performance Guidelines for Non-Capital Criminal Defense Representation*[[10]](#footnote-11) and any additional guidelines or policies established by the MAC Office. More specifically, Attorneys must;
   1. Make every reasonable effort to meet with client in a confidential environment no later than the end of the first working day after being appointed to represent the Client. While encouraged alongside other efforts to communicate with the Client, text messages and written correspondence alone do not satisfy this requirement.
   2. Maintain regular communication and contact with each Client and keep the Client informed of the status of the case,
   3. Advise and consult with the client on matters of the case and any collateral matters as may be required for the client to make decisions in the case,
   4. Investigate facts relevant to the merits of the case, the punishment in the case, and release on bond,
   5. Request and review discovery,
   6. Research the relevant law in the case and file appropriate pre-trial motions,
   7. Prepare and effectively conduct pre-trial litigation when appropriate, including litigation related to the Client’s release on bond or bond conditions, discovery, and evidentiary matters,
   8. Negotiate for the most favorable resolution that meets the Client’s stated goals,
   9. Prepare for trial and, if litigating in court, zealously advocate for the Client at trial,
   10. Maintain professionalism, including when communicating with the Client or the Court, making timely appearances in Court, and communicating with the Court when the Attorney knows that there may be delay before the Attorney can appear in Court, and
   11. Abide any other legal requirements and the Texas Disciplinary Rules of Professional Conduct when representing each client.

### Training Duties Required of Every Attorney

1. Attorneys must complete and annually report 10 hours of criminal-law-related continuing education, including 1 hour of ethics, each year from November 1 to October 31 of the following year; and
2. Attorneys must complete any specific training programs required by the MAC Office

### Evaluation Requirements

1. To remain on an Appointment List, an Attorney must receive a satisfactory annual evaluation (*See infra at* § 13 – Evaluation and Removal); and
2. If an Attorney is requested to perform specific duties (i.e. turn in a continuing education verification form) as part of an action plan, the must perform those duties as requested to remain part of an Appointment List.

### Reporting and Notification Requirements

1. Attorneys must notify the MAC Office whenever their contact information changes;
2. Attorneys must complete an annual continuing education (CLE) verification form;
3. Attorneys must report the annual percentage of the attorney’s practice that was dedicated to work based on appointments accepted in Harris County for adult criminal and juvenile delinquency cases on October 15th of each year;
4. An Attorney must report certain events not later than 48 hours after the event occurs or the next Court setting, whichever is sooner:
   1. The Attorney’s arrest for any offense punishable by confinement,
   2. Whenever the Attorney is convicted or am placed on deferred adjudication, community supervision, diversion, or intervention for an offense punishable by confinement,
   3. The Attorney’s placement on community supervision, diversion, or intervention,
   4. Any judicial finding that the attorney provided ineffective assistance of counsel,
   5. Any change in bar status with the State Bar of Texas,
   6. Any disciplinary action taken by the State Bar of Texas against the attorney, including but not limited to any active or probated suspension, or
   7. Whenever contempt hearing is set for the attorney; and
5. The Attorney must inform the MAC Office whenever circumstances arise that affect their ability to represent Clients or if the Attorney is unable to continue representing their current Clients.

## Qualifications and Requirements for Attorneys Seeking to Participate in the MAC Office Mentorship Program

Attorneys not otherwise qualified to be included in an appointment list may be permitted to participate in the appointment process through the MAC Office’s mentorship program, pairing participants with Resource Attorneys and Attorney mentors to provide extensive support and supervision. The MAC Office will preferentially select applicants who are newly licensed, have a demonstrated commitment to criminal defense, and who have a demonstrated commitment to improving the treatment and services provided to the Clients the MAC Office serves.

## Approval of Qualified Applicants

People who wish to be included in an appointment list may participate in the MAC Office’s onboarding process. To be considered for inclusion on the appointment list, Applicants must:

1. Attend an orientation session hosted by the MAC Office
2. Submit a written application
3. Participate in an interview
4. Be approved by the MAC Office
5. Sign an acknowledgement of the duties and expectations required of each Attorney
6. Attend an orientation session and any other required training. Attorneys who have experience practicing in criminal law, but limited experience as a criminal defense lawyer, limited trial experience, or limited experience practicing in Texas will be required to complete additional orientation sessions tailored to their specific needs.

The MAC Office will publish a schedule of dates in which the MAC Office will receive applications for inclusion in the appointment list and in the mentorship program. The MAC Office must annually schedule at least three dates to receive applications for inclusion in the appointment list and must annually schedule one date to receive applications for the mentorship program.

# Specialty Appointment Lists, Specialties Outside the Appointment Lists, and Qualifications

To ensure that each Client receives effective assistance of counsel, the Harris County Office of Managed Assigned Counsel must ensure that counsel is equipped to handle the complexity and specialization required of each Client’s case.[[11]](#footnote-12) In order to ensure that clients with special needs are represented by counsel capable of meeting those needs, the MAC Office will designate special caseloads, and will determine which special caseload or caseloads each Attorney is qualified to receive.

## Special Appointment Lists and Qualifications

The following specializations are recognized for Attorneys who accept appointments through the MAC Office.

### Mental Health Defense Specialist

If the Public Defender’s Office is unable to represent a Client, the Mental Health Defense Specialist represents a Client identified using the mental health algorithm; a Client found incompetent; or a Client manifesting signs of mental illness when the Public Defender’s Office reaches its daily or annual caseload cap. The Attorney must:

1. Meet the minimum Attorney requirements to accept the appointment; and
2. Meet at least one of the following three requirements:
   1. Has previous experience representing Clients with mental illness in Texas;
   2. Possesses an undergraduate or graduate degree in social work or a related field; and/or
   3. Attended the four-hour Mental Health Defense Specialist seminar sponsored by the Harris County Public Defender’s Office.

### Appeals and Habeas Corpus

If the Public Defender’s Office is unable to represent a Client on appeal or a Client requests to continue to be represented by a qualified Attorney on appeal, the MAC Office shall appoint an Attorney to represent a Client on appeal. The Attorney must:

1. Meet the minimum Attorney requirements to accept the appointment; and
2. Have been attorney of record in at least five direct appeals and the appeal of adverse rulings in at least two writs of habeas corpus or be mentored by an Attorney who has been attorney of record in at least five direct appeals and the appeal of adverse rulings in at least two writs of habeas corpus.

### Bilingual Attorney

Represents a Client who does not speak or understand the English language. The Attorney must:

1. Meet the minimum Attorney requirements to accept the appointment; and
2. Demonstrate a Level III proficiency in a foreign language administered by a nationally recognized entity or organization that teaches individuals to read, write, and speak foreign languages through on-site instruction in Harris County, Texas.

### Fugitive Defense Specialist

Represents a person who has been arrested in Harris County, Texas on a warrant from another state or another county in Texas. The Attorney must:

1. Meet the minimum Attorney requirements to accept the appointment; and
2. Have demonstrated experience or MAC-approved training in conducting hearings and writ applications involving defendants held under authority of out-of-state or out-of-county warrants.

### S.O.B.E.R Court Program Attorney

Represents a Client in the S.O.B.E.R Court Specialty program for persons convicted of driving while intoxicated. The Attorney must:

1. Meet the minimum Attorney requirements to accept the appointment or meet the qualifications to practice in a specialty district court dealing with substance abuse issues;
2. Observe one staffing and review in each S.O.B.E.R. Court;
3. Read selected articles on specialty courts, and the role of defense counsel in specialty courts;
4. Work under the direction of a S.O.B.E.R. Court mentor Attorney, representing program participants for 60 days;
5. Agree to attend grant sponsored specialty court training; and
6. Agree to an hourly fee for professional services, and which does not include training (except for representation of a client under a mentor); graduations, or other activities.

### Veteran’s Court Program Attorney

Represents a Veteran or current member of the United States armed forces, including a member of the Reserves, National Guard or State Guard, who has been accepted into Veterans Court Program. The Attorney must:

1. Meet the minimum Attorney requirements to accept the appointment;
2. Read selected articles on specialty courts, and the role of defense counsel in specialty courts;
3. Observe three dockets (staffing and review);
4. Agree to attend grant-sponsored team training; and
5. Agree to an hourly fee for professional services, and which does not include training (except for representation of a client under a mentor); graduations, or other activities.

### Project Second Chance Court Program Attorney

Represents a Client who is charged with prostitution, from the age of 17 years of age through the age of 25 years of age who has been accepted into the Project Second Chance Court program. The Attorney must:

1. Meet the minimum Attorney requirements to accept the appointment;
2. Read selected articles on specialty courts, and the role of defense counsel in specialty courts;
3. Observe three dockets (staffing and review);
4. Agree to attend grant sponsored team training; and
5. Agree to an hourly fee for professional services, and which does not include training (except for representation of a client under a mentor); graduations, or other activities.

### Deaf or Hearing Impaired

Represents a Client who is deaf, or severely hearing impaired. The Attorney must:

1. Meet the minimum Attorney requirements to accept the appointment;
2. Have a working knowledge of American Sign Language or other universally accepted sign language; and
3. Possess the willingness to work through a state-licensed interpreter for the deaf and hearing impaired.

## Specialties Outside the Appointment List and Requirements

When necessary, the MAC Office will designate specialized services that ensure that clients receive the nature of service required for their cases or to support their needs.

### Bilingual Investigator

Serves as an Investigator in cases needing language and cultural proficiency. The Investigator:

1. Meet the Investigator requirements; and
2. Have demonstrated proficiency in a foreign language. This proficiency may be demonstrated in the same way as designated for bilingual attorneys, or any other way designated by the MAC Office.

# Educational Requirements and Training Programs for Attorneys Receiving Appointments

State laws and regulations mandate that Attorneys receiving appointments meet general continuing education requirements[[12]](#footnote-13) and must meet specific continuing education requirements to be eligible to represent indigent people in criminal cases.[[13]](#footnote-14) Beyond these general mandates, the Harris County Office of Managed Assigned Counsel believes that continuing education is critically important to ensure that Attorneys understand how to utilize the resources provided by the MAC Office, to understand the changes in Texas and Federal law impacting criminal cases, to better predict the collateral consequences of convictions and other dispositions, and to better understand and meet Clients’ needs.

## MAC Office Annual Continuing Education Requirements

In order to remain eligible to receive appointments, Attorneys are expected to complete 10 hours of continuing education in criminal-defense-related topics, including 1 hour of ethics annually. Compliance will be measured on a cycle that starts on November 1 and ends on October 31 of the following year.

## Additional Requirements

In addition to the educational requirements imposed by the Office of Managed Assigned Counsel, the State Bar[[14]](#footnote-15) and the Administrative Code,[[15]](#footnote-16) the Office of Managed Assigned Counsel will expect Attorneys to attend an orientation program before participating in case intake and may expect Attorneys to attend specific continuing education programs, skills training, programs that help attorneys to better use the MAC Office’s resources, and other programs that promote the MAC Office’s missions of client-centered, holistic representation and improving indigent defense. These programs may be mandatory for all participating attorneys, may be mandatory for attorneys accepting certain types of cases, or may be mandatory for attorneys needing additional training.

# Providing Litigation Support Resources to Attorneys Receiving Appointments

Effective indigent defense requires *“*parity between defense counsel and the prosecution with respect to resources.”[[16]](#footnote-17) *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission* indicates that the most critical shortfall in indigent defense is in access to investigators, and noted that the growing use of forensic evidence, the increased prevalence of clients with mental health problems, and the increasing number of collateral consequences of conviction impose demands upon attorneys.[[17]](#footnote-18)

The Office of Managed Assigned Counsel will offer several services to the Clients of participating Attorneys, including providing access to investigators, social workers, an immigration attorney, and other resources. The MAC Office strongly recommends that Attorneys utilize these resources in any case where their clients would likely benefit from such supportive services. The MAC Office will make every effort to fulfill any reasonable request for litigation support resources.

## Ensuring Access to Services

The MAC Office is responsible for ensuring that the provision of investigators, social workers, immigration consultation, and other resources is fair and equitable. First, where possible, the MAC Office will distribute services in a manner that prioritizes clients in critical need of assistance first, then distributes services as evenly as possible. Second, where the MAC Office cannot, due to conflict or lack of available resources, directly provide case-critical services itself, it will attempt to coordinate resources through external service providers. However, with regard to Social Worker referrals, if such requests are made on a daily or regular basis, social work services may be distributed to Clients in order of when the request for services is received subject to the discretion of the MAC Office.

## Requesting Services

The MAC Office will ensure the process used to request resources, including access to investigators, experts, immigration consultations, and social workers, is relatively simple, confidential, and convenient. The MAC Office will prioritize time-sensitive requests to ensure that Clients are well-served. However, where an ordinary request becomes time-sensitive due to an Attorney or Client’s delay or inaction, the MAC Office cannot guarantee immediate service.

Attorneys shall have the ability to request access to certain experts or investigators. So long as those experts or investigators accept the payment schedule approved by the MAC Office and the provision of those services is necessary for the effective, zealous representation of a Client, the Attorney shall be able to work with the designated expert or investigator.

## Client Confidentiality

The MAC Office respects Clients’ Sixth Amendment rights and the confidentiality of attorney-client communications. Only the team responsible for providing specific services to a client will have access to information related to the Client’s case, and this information will be shared in between teams providing different services when both teams are attached to a case.

## Payment of External Contractors, Including Experts and Investigators

MAC Office will allow investigators or experts to submit their requests for payment directly to the MAC Office. The MAC Office will confirm with the Attorney that investigators or experts rendered the requested service. The MAC Office will then reject or approve the request based on the services that were rendered and authorized by the MAC Office. Any decision to pay less than the full amount requested must be documented.

# Allocating Appointments to Eligible Attorneys

In order to be effective, a system delivering legal services to the accused must ensure that “the selection […] of defense counsel, is independent.”[[18]](#footnote-19) An appointment system must timely and fairly appoint counsel to the clients it serves.[[19]](#footnote-20) Appointment systems must be “fair, neutral, and non-discriminatory.”[[20]](#footnote-21) The Office of Managed Assigned Counsel will implement an appointment system that assigns counsel to a client as soon as possible and which employs a transparent, neutral methodology to determine which Attorney will represent a client.

## Timely Appointment of Counsel

The MAC Office must ensure that an Attorney is assigned to a case as soon as practicable after a client is determined to be eligible for appointment of counsel under Articles 26.04 and 26.047(b)(1) of the Texas Code of Criminal Procedure. This determination may be made by the trial court under Article 26.04 of the Texas Code of Criminal Procedure or by the Magistrate under Article 15.17 of the Texas Code of Criminal Procedure. As soon as the Judge or Magistrate designates that a person needs the appointment of counsel, the MAC Office will coordinate with other county officials to ensure that Attorneys are present and ready to serve those Clients soon after the Client is deemed eligible for appointed counsel and the MAC Office is designated as the appointment authority.

## Equal Opportunity to Participate in Client Intake

The MAC Office will operate in a manner that offers all eligible Attorneys opportunity to participate in Client intake periods on a rotational basis. To the extent possible, Attorneys may freely choose to decline to participate in those Client intake periods. Attorneys’ ability to participate in Client intake periods may be limited by the Attorney’s caseload, daily maximum caseload limits, or conditions imposed as part of their participation as an Attorney.

## Client Intake: Clients and Cases Involving Particularized Needs

The MAC Office is responsible for ensuring that the Attorneys handling cases are able to competently and effectively represent each client assigned through the MAC Office.[[21]](#footnote-22) For Attorneys accepted into the MAC Office mentorship program, the MAC Office will proactively use Resource Attorneys to serve as appropriate, either serving as first chair in the case or supporting the Attorney as a second chair or through other supportive methods. For clients with unique needs that require particularized skills outside of Attorneys’ typical skillsets, the MAC Office will ensure that an Attorney with the appropriate skillset is appointed to the case. In all cases, the MAC Office will ensure that the Attorney handling the case has the requisite skills and experience needed to effectively represent the Client.

## Client Intake: New Cases Outside of Specialty Courts

Each Resource Attorney will be assigned a Team. Each Team will have a list of Attorneys qualified to receive appointments and a separate list of qualified bilingual Attorneys. Each Team will be assigned to a different set of Courts, and Attorneys within each Team will perform client intake in a randomly assigned Court within the Team’s list of Courts. Each Team will cycle through its lists on a rotational basis. Cases involving clients who do not speak the English language or who are deaf may be preferentially assigned to qualified bilingual attorneys or may be assigned to a qualified attorney with access to appropriate language support services. Cases not requiring a qualified bilingual attorney will be assigned a manner to distribute the total caseload among all eligible attorneys as evenly as possible.

## Client Intake: New Cases Inside Specialty Courts

The MAC Office will assign Attorneys to each Specialty Court according to the specific needs of that Specialty Court, which may include the need for continuity of representation and practical concerns that are not typical of the appointment process.

## Clients with Multiple Charges and/or Types of Cases

Whenever practicable, the MAC Office will strive to preserve existing attorney-client relationships and will ensure the lawyer responsible for a Client’s most serious charges has control over the legal work performed in the case. This will include attempting to ensure that a single lawyer is appointed in the Client’s cases when it is within the MAC Office’s authority to appoint an Attorney in the case.

### In cases where the Client faces a single charge or requires appointment of counsel in several cases at the same time,

1. Appoint a single Attorney eligible to handle all the Client’s case(s), if possible.
2. Appoint the original Attorney to represent a Client on motions to revoke probation and motions to adjudicate guilt filed within 60 days of any final judgment or order in the case.
3. When an Attorney is eligible to handle a client’s appeal and the client consents, allow the original Attorney to continue represent the Client on appeal.

### In cases where the Client has been appointed an original Attorney in initial case(s) and faces newly-filed charge(s),

1. When the original Attorney is eligible for the new appointment(s) and the MAC Office has the authority to appoint the original Attorney, allow the original Attorney to represent the Client in the new case(s).
2. When the original Attorney is ineligible for the new appointment(s) or the MAC Office has no authority to appoint an Attorney in the case, allowing a newly-appointed attorney in the new case(s) to represent the Client on the initial cases if the newly-appointed Attorney is qualified to handle the initial case(s). In addition,
   1. If the newly-appointed Attorney is not part of the relevant appointment list, the newly-appointed Attorney must meet the minimum qualifications for the relevant appointment list(s) and must agree to the MAC Office’s performance standards.
   2. If the client consents, the original Attorney will be permitted to remain on the Client’s case as second chair. If the MAC Office has the authority to do so, the original Attorney may be also appointed to the new case as second chair, even if the original Attorney is not qualified to receive the new appointment as a first chair.
3. When the Client is represented by the Public Defender’s Office in either the initial case(s) or the new case, coordinate with the Public Defender’s Office to ensure that the Public Defender’s Office represents the Client in all the Client’s cases.

# Continued Representation by the Same Attorney Until the Disposition of a Case

The Harris County Office of Managed Assigned Counsel believes that continuous representation of Clients by the same Attorney best serves the Client, and that the Attorney-Client relationship should be protected from undue interference. The MAC Office must “provide for continuous and uninterrupted representation of eligible clients” from the point at which the Attorney is first attached to the case to the point the case is disposed.[[22]](#footnote-23) In addition, “[w]henever an attorney‑client relationship has been established between an eligible accused and [an] attorney, the defense system should not terminate or interfere with that relationship without great justification, and the attorney should resist efforts by the court to terminate or interfere with that relationship.”[[23]](#footnote-24)

## Duration of Appointment

Generally, Attorneys are expected to continue representing a client from the initial appointment until the disposition of the client’s cases. For a trial court appointment, the appointment lasts through the client’s cases are resolved through dismissal, diversion, trial, agreement, sentencing, placement on community supervision, removal to a different type of court, or similar events that mark the end of traditional trial-level representation. For an appellate appointment, the appointment lasts until the disposition of the Client’s appeals. In certain cases, it may be necessary for an Attorney to take actions on the Client’s behalf to ensure the Client’s rights are protected or to mitigate the impact of the client’s arrest, and the MAC Office may permit the Attorney to take these actions under the scope of the initial appointment.

## Continuing Representation on Appeal or in Other Courts

If the Client’s cases are transferred into Courts where the MAC Office manages the appointment process (for instance, a misdemeanor case is disposed and the Client files an appeal), where the Client and Attorney wish to continue the Attorney-Client relationship and the Attorney is qualified to receive the new appointment, the Attorney will be permitted and encouraged to continue representing the Client.

## Substitution of Counsel

Where the Court orders the appointment of new counsel in a case, the MAC Office may appoint a different Attorney in this case. However, the MAC Office must take the circumstances of the reappointment request into consideration before reassigning the client to a new Attorney, and may reappoint the original Attorney when the reappointment request would interfere with the Attorney-Client relationship or where the reappointment of counsel is unlikely to resolve the underlying issues that lead to the request to appoint new counsel in the case. In cases where the Attorney is no longer able to serve the Attorney’s Clients, for instance if that Attorney becomes severely injured and is incapacitated, the MAC Office shall work with the Courts to ensure continuity of care for the Attorney’s Clients.

# Conflicts of Interest

Conflicts of interest are corrosive to the provision of effective assistance of counsel[[24]](#footnote-25), violate the Texas Disciplinary Rules of Professional Conduct[[25]](#footnote-26), and can impair the mission of the Office of Managed Assigned Counsel.[[26]](#footnote-27) It is the responsibility of both the Office of Managed Assigned Counsel and Attorneys appointed in a case to avoid conflicts. Although the MAC Office will attempt to avoid appointing Attorneys with conflicts of interest with a particular Client, not all conflicts are easily detectable. Upon learning of conflict of interest affecting a particular Client, an Attorney must immediately alert the MAC Office to appoint new counsel.

## General Rule: Avoidance of Conflicts involving Attorneys and Resource Attorneys

No Attorney shall be appointed to represent a Client where the appointment would cause a conflict of interest, including causing the Attorney to:

1. represent more than one of the parties involved in a prosecution with multiple defendants;[[27]](#footnote-28)
2. represent a person who was a complainant or material witness in a former client’s case;[[28]](#footnote-29)
3. represent a person who has a direct conflict of interest with the Attorney, whether it is financial, ethical, or otherwise;[[29]](#footnote-30) or
4. represent a person who has any other conflict of interest with the attorney not specified here.[[30]](#footnote-31)

These requirements extend beyond the initial appointment to represent a Client. For instance, an Attorney may not represent a Client’s co-defendant in a subsequent case, even if it is unrelated to the initial appointment.[[31]](#footnote-32) These rules apply to the Resource Attorneys and any other criminal defense attorneys working for the MAC Office who may otherwise provide assistance in casework.

## General Rule: Holistic Services

While the risk of a conflict of interest is still present when the MAC Office provides holistic services to a Client, generally the provision of holistic services to a Client is limited in scope, is generally shorter in duration, and the confidential communications are typically narrower than the communications involved in criminal defense[[32]](#footnote-33). Where there is no clear risk of a conflict of interest, Clients will be warned of the potential for conflicts of interest if the MAC Office previously provided services to parties adverse to the Client. Where the MAC Office identifies a party as adverse to a former or current Client during a conflict check, the MAC Office *may* offer holistic services to the party pursuant to the MAC Office’s policy on offering MAC Office services to adverse parties, detailed below, or may otherwise secure the Clients’ access to holistic services.

## Offering MAC Office Services to Adverse Parties

To assess whether providing services to adverse parties involves a conflict of interest, the MAC Office shall determine:

1. If there is a risk of violating ethical requirements requiring the MAC Office to protect Clients’ confidential information;
2. If the MAC Office services would involve the same matter or substantially related matters; and/or
3. Whether the provision of services would likely cause any person to question the validity of the MAC Office’s services.[[33]](#footnote-34)

If the MAC Office determines there is no actual or perceived conflict of interest, the MAC Office may provide services to the adverse parties. If the MAC Office determines that there may be a conflict of interest but the representation of each client will not be materially affected by the conflict of interest, an exception to the general rule requiring the avoidance of conflicts of interests may be made only after obtaining informed consent from the individual client and formal approval from the Executive Director and/or Deputy Director. Exceptions will only be made when it is demonstrated that it is in the best interest of the Client for the MAC Office to provide services to a particular Client despite the outward appearance of a conflict.

## Protecting the Rights of Clients Who Cannot be Served Directly by the MAC Office

Where Clients cannot be provided necessary services by employees of the MAC Office due to conflicts of interest or inability of the MAC Office to perform the services, the MAC Office may help the Clients secure external services. These services may be provided by agencies and organizations partnering with the MAC Office, independent contractors, or any other provider who can offer supportive services to a Client.

# Evaluation And Removal

Clients are Constitutionally[[34]](#footnote-35) entitled to receive and Attorneys are ethically obligated to provide[[35]](#footnote-36) zealous, effective representation. Among other skills, representation of counsel requires communication,[[36]](#footnote-37) competence,[[37]](#footnote-38) preparation[[38]](#footnote-39), and awareness of the legal consequences of decisions made at trial.[[39]](#footnote-40) In order to fulfill its obligation to protect Clients’ rights, the Harris County Office of Managed Assigned Counsel is required to monitor and evaluate Attorney performance.

## Support and Evaluation

Attorneys will be assigned a Resource Attorney. The Resource Attorney will be available to provide support to attorneys, such as case consultation and brainstorming, litigation or trial assistance, and connecting attorneys to other MAC or external services. The Resource Attorneys are also charged with evaluating the attorneys who receive appointments. To ensure that attorneys have access to services, support, and feedback, all attorneys will be required to meet with the Resource Attorney on a quarterly basis. One of those meetings will include an annual evaluation. The meetings will provide an opportunity for the attorneys to share any concerns they have, discuss any case or court issues, and to give and receive feedback.

Attorneys will be reviewed annually by their assigned Resource Attorney(s) and Division Chief. The Resource Attorney(s) and Division will use a variety of sources of information including but not limited to the Attorney’s input, observation, client feedback, and judicial feedback, public information, documents, and records from the Courts, Jails, and District Attorney’s Office, non-confidential information about the services and experts Attorneys request, and other similar information. The MAC Office can only use information that it can lawfully and constitutionally obtain to evaluate Attorney performance, and the MAC Office takes its obligations to protect confidential material protected by the attorney-client relationship and the Sixth Amendment seriously. Areas of evaluation include client communication, legal knowledge, pre-trial litigation, investigation, mitigation investigation, sentencing advocacy, oral advocacy, trial skills if applicable, punctuality, preparation, and professionalism. The MAC Office recognizes that each client has their own interests and needs, each case presents its own strategic considerations, and that the MAC Office must generally look at the totality of their performance.

## Action Plan

The MAC Office believes that all but the most serious or persistent concerns can be dealt with by better clarifying and expressing the MAC Office’s expectations. In cases where informal communication is insufficient to ensure that an Attorney will comply with expectations, the MAC Office and Attorney will agree to an Action Plan that details steps to address the MAC Office’s concerns.

## Inactive Status

If an Attorney is temporarily unable to perform the duties expected of the Attorney – for example, due to family emergencies, a health emergency, or a failure to submit required paperwork to the State Bar or MAC Office – the Attorney may be placed on inactive status while the Attorney addresses those needs. An Attorney can remain on inactive status for one year before being removed from the list and asked to re-apply. An Attorney will automatically be placed on inactive status while the MAC Office analyses any event that calls into serious question the ability of the Attorney to meet the Attorney’s obligation to the MAC Office or the Attorney’s clients. For example, if an Attorney’s bar license is suspended or the Attorney is declared ineffective, the MAC Office will immediately place the Attorney on inactive status while the MAC Office investigates the underlying concern. If an Attorney who is on inactive status regains the ability to perform the duties expected by the MAC Office, the Attorney may be allowed to take new cases without reapplying for inclusion on the Appointment List.

## Grounds for Attorney Removal

When an Attorney is no longer willing or is unable to perform the duties expected of the Attorney for over a year, the Attorney will be removed from the Appointment List. If the reasons are beyond the Attorney’s control or the Attorney complies with the MAC Office’s requests before being removed (i.e. the Attorney continues to represent clients until cases conclude or are reassigned, then the Attorney moves out of state, and later returns to Harris County), the Attorney will be eligible to reapply for inclusion on the Appointment List. If the Attorney routinely fails to meet obligations to Clients or fundamentally breaches the agreement between the MAC Office and the Attorney such that it is untenable to allow that Attorney to continue to receive appointments, it may be necessary to remove the Attorney from the list permanently. The following factors will guide the MAC Office’s decision to remove an Attorney from the appointment list and whether that removal is permanent:

1. The seriousness and gravity of the breach of duty;
2. Whether the breach of duty involves fraud, dishonesty, or misfeasance;
3. Whether the Attorney was given an opportunity to remedy the breach but failed to take any meaningful steps toward remediation;
4. Whether the inclusion of the Attorney on the list would cause the Clients or Community to question the mission and values of the MAC Office; and/or
5. Whether the Attorney has been inactive or has refused appointments for a period that exceeds one year.

## Attorney Removal Procedure

In cases where removal from the list is involuntary or due to the permanent incapacity of the Attorney, the MAC Office shall send written notice explaining why the MAC Office believes the Attorney should be removed from the list. The Attorney will have 15 days to respond to the MAC Office in writing. The MAC Office may conduct a review of the matter by interviewing the Attorney, Clients, and other stakeholders, reviewing documentation, transcripts, feedback, data, and/or collecting any other information it deems necessary to a fair resolution of the matter. The outcome of the review shall be decided by a majority vote from a panel of two or more Resource Attorneys and the Misdemeanor Division Chief. If the Attorney fails to respond to the written notice of removal or the MAC Office concludes the review and determines the Attorney should be removed from the list, the Attorney may be removed from the list at the MAC Office’s discretion. In any case where an Attorney is removed from the appointment list, the MAC Office shall document the reason for the removal and must notify the Attorney of the final decision in writing. All notifications from the MAC Office to the Attorney regarding removal from the list will be made through postal mail and e-mail using the Attorney’s information on file with the MAC Office.

## Appeal from Removal Process

An Attorney may appeal to the MAC Office within 15 days of the date the final notice of removal is sent to the Attorney by requesting a review of the decision in writing. A panel of at least 3 lawyer members of the MAC Office’s leadership team who did not participate in the initial decision will review the decision and will determine the outcome of the appeal by majority vote. The panel’s decision will be final.

## Ensuring Appropriate Care and Continuity of Care for Clients When the Client Desires the Appointment of New Counsel

A Client represented by an Attorney may request the appointment of new counsel. While the MAC Office does not have the authority to sever the Attorney-Client relationship, it has the power to intervene in appropriate cases. Whenever faced with a request that may legitimately require the appointment new counsel, in consultation with the Attorney and the Client, the MAC Office shall determine whether the MAC Office should intervene in the case. In the limited circumstances where intervention is necessary and appropriate, the MAC Office may take steps to preserve the right to effective assistance of counsel.

## Ensuring Appropriate Care and Continuity of Care for Clients When the Court Desires the Appointment of New Counsel

A Client’s request for new counsel is ultimately decided by the Court. However, in circumstances warranting intervention by the MAC Office, the MAC Office may decline to appoint new counsel where removal of an Attorney from the case will unduly impair the Attorney-Client relationship and impede the Client’s defense. In those instances, the MAC Office retains the authority reappoint the Attorney to preserve the independence of the Attorney-Client relationship.

## Ensuring Appropriate Care and Continuity of Care for Clients When the Attorney Wishes to Withdraw from the Case

An Attorney may request that the MAC Office permit the Attorney to withdraw from the case and appoint a different Attorney to represent a Client. The MAC Office shall determine whether good cause exists to appoint a new Attorney without delay. In particular, the MAC Office shall determine whether any issue impacting the Attorney/Client relationship is likely to be resolved by appointing new counsel. In most cases, Attorneys will be strongly discouraged from withdrawing in a case and will be expected to represent each Client through the duration of the Client’s cases.

## Ensuring Appropriate Care and Continuity of Care for Clients When It Is No Longer Possible for an Attorney to Meet Their Needs

In the event that the MAC Office determines an Attorney is unlikely to be able to provide the level of service and care one or more Clients require and deserve, the MAC Office may take steps to ensure the Client or Clients needs are properly met. These steps may include providing the Attorney supportive services, assigning a Client to an attorney with the requisite specialized skills or training to meet a Client’s particularized needs, or in more extreme circumstances where the Attorney is unable to provide services to one or more Clients (for example, due to extended hospitalization), immediately reassigning Clients to other eligible Attorneys. The MAC Office shall only re-assign a Client to another Attorney to avoid a conflict or where there are no other options likely to safeguard the Client’s rights. In any case where a new Attorney is appointed to represent a Client, the MAC Office shall document the reason for the reassignment.

# Payment of Appointed Attorneys

The Harris County Office of Managed Assigned Counsel is the custodian of Harris County funds that are used to pay Attorneys, who as private contractors, agree to receive appointed clients at the rates approved by the Judiciary. To ensure that Attorneys are fairly paid for services, the MAC Office must abide by Harris County policies and procedures relating to the expenditure of Harris County Funds.

## Rates and Fees

Statutorily, the Judiciary remain responsible for determining the schedule of fees paid in criminal cases.[[40]](#footnote-41) The MAC Office will authorize all claims as specified in the schedule of fees adopted by Harris County courts.

## Submission of claims

If an Attorney participates in intake (one or more days) during any calendar week, the rules enforced by the County Auditor and Judiciary require Attorneys to submit a voucher listing each case the attorney was appointed to during that week by the conclusion of the docket on the last week day of the same calendar week (intake fee). In addition, the rules require Attorneys to submit vouchers for individual cases (hourly fees) within 30 days of the disposition of the case. Attorneys are responsible for submitting their vouchers in a timely manner. Only Attorneys who are authorized to accept appointments by the MAC Office may submit claims for payment.

## Interim Vouchers

The MAC Office will permit the submission of interim vouchers if, and to whatever extent, the County Auditor permits the MAC Office to submit interim vouchers.

## Expenses

Subject to County policies and requirements, the MAC Office will reimburse appointed attorneys for reasonable and necessary expenses incurred on behalf of representing an indigent client.

# Plan for Transition And Cooperation between Harris County Stakeholders

The Harris County Office of Managed Assigned Counsel understands that management of Court Appointments in Harris County is a process that affects thousands of Clients, dozens of Attorneys, and many other stakeholders. In recognition of the size and particularized needs of the County, the responsibility to the Clients, Attorneys, and other stakeholders impacted by the MAC Office’s operations, and complexity of some of the technological changes the MAC Office wishes to implement, the MAC Office is committed to an orderly, phased transition plan that ensures continuity of service to the Clients.

## Transitioning from Term-Based Appointments to Intake System

The MAC Office will transition away from term appointments and eventually implement an automated intake scheduling system. The automated system will allow the MAC Office to minimize the amount of labor needed to schedule Attorneys for intake periods allowing intake to take place on a daily or weekly basis. While the automated appointment system is being developed, the MAC Office will continue scheduling appointments on a term basis. Allowing term appointments in the interim will ensure that the MAC office is not exceeding its labor capacity in management of the Attorney appointments since terms are of longer duration and therefore need to be scheduled less frequently.

## Managing the Appointment Process in Specialty Courts

Specialty Courts like drug courts and veteran’s courts often function very differently than traditional Court and often entail very specific requirements. If any changes are made to any Specialty Court programs, they will be made only after consulting with the Courts, the Attorneys accepting cases in Specialty Courts, Court Coordinators, Program Administrators, and Clients in the program to ensure that changes do not disrupt the operation of the Specialty Courts.

## Implementing Changes to Harris County Data Systems

The Court appointment system in Harris County is complex, branches across several Harris County departments, involves direct support by staff in the Courts and Court Administration, and is supported by an intricate data network and custom software applications. These systems ensure that all aspects of the appointment process are connected, from appointment to payment of Attorneys appointed to Clients. The MAC Office will work with other Harris County departments to ensure that it has the ability to manage appointments, fulfill reporting obligations, monitor attorney performance, and meet all MAC Office obligations with the MAC Office’s staff. Achieving these goals will require changes made to the current appointment system to accommodate increased levels of automation. The MAC Office’s ability to fully manage the case intake system in all Courts depends on access to and integration with Harris County data systems.

## Transitioning from the current Court Appointment System to a Managed Assigned Counsel Appointment System

Until the modifications and systems needed to support the MAC Office are completed, the MAC Office will manage the appointment in a number of Courts deemed feasible given the limitations imposed upon the MAC Office.

# Other Policies and procedures

Beyond the Policies and Procedures outlined in the Plan of Operation and the rules set forth in the Harris County Indigent Defense Plan, the Harris County Office of Managed Assigned Counsel can and should adopt and publish additional Policies and Procedures to accomplish the following goals:

1. Ensure that Clients and Attorneys have equal access to MAC Office resources, are treated fairly by the MAC Office, and that the MAC Office decision-making process is transparent and not unduly subjective;
2. Harmonize requirements for investigators, experts, and other contractors in a manner that is consistent with the spirit and tenor of this Plan of Operation;
3. Ensure MAC Office operates in an efficient and orderly manner; and
4. Meet the MAC Office’s obligations to the public and community as an office supported through public funds.

1. *Ten Principles of a Public Defense Delivery System*, American Bar Association (Feb. 2002). [↑](#footnote-ref-2)
2. Norman Lefstein, *Securing Reasonable Caseload: Ethics and Law in Public Defense*, American Bar Association (2011). [↑](#footnote-ref-3)
3. Dottie Carmichael et al., *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission*, Texas A&M University (2015). [↑](#footnote-ref-4)
4. *Id.* [↑](#footnote-ref-5)
5. *Ten Principles of a Public Defense Delivery System*, American Bar Association (Feb. 2002). [↑](#footnote-ref-6)
6. National Right to Counsel Committee, *Justice Denied: America’s Continuing Neglect of Our Constitutional Right to Counsel*, Constitution Project (2009). [↑](#footnote-ref-7)
7. Tex. Disciplinary Rule of Prof. Conduct R. 1.01(a). [↑](#footnote-ref-8)
8. Art. XII, § 6A, *State Bar Rules* , State Bar of Texas (2018). [↑](#footnote-ref-9)
9. Tex. Admin Code § 174.1(1) requires the completion of a minimum of six hours of continuing legal education pertaining to criminal law during each 12-month reporting period to be eligible to be appointed to represent an indigent person arrested for or charged with a crime. [↑](#footnote-ref-10)
10. *Performance Guidelines for Non-Capital Criminal Defense Representation*, Standing Committee on Legal Services to the Poor in Criminal Matters of the State Bar of Texas (2011). [↑](#footnote-ref-11)
11. Tex. Disc. R. Prof. Conduct. 1.01, Cmt. 2. [↑](#footnote-ref-12)
12. Art. XII, § 6A, *State Bar Rules* , State Bar of Texas (2018). [↑](#footnote-ref-13)
13. Tex. Admin Code § 174.1(1) requires the completion of a minimum of six hours of continuing legal education pertaining to criminal law during each 12-month reporting period to be eligible to be appointed to represent an indigent person arrested for or charged with a crime. [↑](#footnote-ref-14)
14. Art. XII, § 6A, *State Bar Rules* , State Bar of Texas (2018). [↑](#footnote-ref-15)
15. Tex. Admin Code § 174.1(1). [↑](#footnote-ref-16)
16. *Ten Principles of a Public Defense Delivery System*, American Bar Association (Feb. 2002). [↑](#footnote-ref-17)
17. Dottie Carmichael et al., *Guidelines for Indigent Defense Caseloads: A Report to the Texas Indigent Defense Commission*, Texas A&M University (2015). [↑](#footnote-ref-18)
18. *Ten Principles of a Public Defense Delivery System*, American Bar Association (Feb. 2002). [↑](#footnote-ref-19)
19. Texas Code of Criminal Procedure, 26.04(a). [↑](#footnote-ref-20)
20. 1 Tex. Admin. Code § 174.28 [↑](#footnote-ref-21)
21. Tex. Disciplinary R. Prof. Conduct 5.01 [↑](#footnote-ref-22)
22. Guideline 5.11, *Guidelines for Legal Defense Systems in the United States*, National Legal Aid and Defender Association (1976). [↑](#footnote-ref-23)
23. Guideline 5.12, *Guidelines for Legal Defense Systems in the United States*, National Legal Aid and Defender Association (1976). [↑](#footnote-ref-24)
24. *See Cuyler v. Sullivan*, 446 U.S. 335 (1980). [↑](#footnote-ref-25)
25. *See* Tex. Disciplinary R. Prof. Conduct, 1.06 *et seq*. [↑](#footnote-ref-26)
26. *See* Tex. Disciplinary R. Prof. Conduct, 5.01 *et seq*. [↑](#footnote-ref-27)
27. Tex. Disciplinary R. Prof. Conduct, 1.06 [↑](#footnote-ref-28)
28. Tex. Disciplinary R. Prof. Conduct, 1.09 [↑](#footnote-ref-29)
29. Tex. Disciplinary R. Prof. Conduct, 1.06 [↑](#footnote-ref-30)
30. *See* Tex. Disciplinary R. Prof. Conduct, 1.06 *et seq*. [↑](#footnote-ref-31)
31. Tex. Disciplinary R. Prof. Conduct 1.06(b). [↑](#footnote-ref-32)
32. The Professional Ethics Committee For the State Bar of Texas, Opinion 608 (2011); Tex. Disciplinary R. Prof. Conduct 6.05. [↑](#footnote-ref-33)
33. The Professional Ethics Committee For the State Bar of Texas, Opinion 608 (2011). [↑](#footnote-ref-34)
34. *See generally Gideon v. Wainwright*, 372 U.S. 335 (1963); *Strickland v. Washington*, 466 U.S. 668 (1984). [↑](#footnote-ref-35)
35. Tex. Disciplinary R. Prof. Conduct 1.01(b); Tex. Disciplinary R. Prof. Preamble. [↑](#footnote-ref-36)
36. *Missouri v. Frye*, 132 S. Ct. 1399 (2012). [↑](#footnote-ref-37)
37. *Lafler v. Cooper*, 132 S. Ct. 1376 (2012). [↑](#footnote-ref-38)
38. *Strickland v. Washington*, 466 U.S. 668 (1984). [↑](#footnote-ref-39)
39. Padilla v. Kentucky, 130 S. Ct. 1473 (2010). [↑](#footnote-ref-40)
40. Tex. Code Crim. Proc., art. 26.05(b). [↑](#footnote-ref-41)