

Wichita District Court and County Court Plan

10/21/19

I. Prompt Magistration

Arresting Officer Responsibility

The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested. "Magistrates" shall be the Justices of the Peace for Wichita County, the Presiding Judge of the Municipal Court of Wichita Falls, Texas, and the Contract Weekend Magistrates in Wichita County, together with any other persons approved by the County, County Court at Law and District Judges for Wichita County.

Unless arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.

Magistrate Duties

At the Magistrate's hearing, the magistrate shall determine if accused can speak and understand English, or if the defendant is deaf.

After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:

1. Advise the accused of the accusation against him/her and any affidavit filed therewith;
2. Admonish the accused of
 - a) The right to retain counsel;
 - b) The right to remain silent;

- c) The right to have an attorney present during any interview with peace officers or attorneys representing the state;
 - d) The right to terminate an interview at anytime;
 - e) The right not to make a statement and that any statement made by the accuse may be used against him/her; and
 - f) The right to an examining trial
3. Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedure for requesting appointment of counsel
 4. Inquire as to whether accused is requesting that counsel be appointed
 5. Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing. Members of the jail staff will assist the Magistrate if requested to do so. The Declaration of Inability to Hire Counsel and Request for Court Appointed Counsel are attached hereto as "**Exhibit A**" and **Exhibit A-1**" (by inmates only)
 6. If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed. The Certification of Magistrate's Warning, Probable Cause Determination, and Order Setting Bond is attached hereto as "**Exhibit B**".

In cases where the individual was arrested without an arrest warrant, bench warrant, capias, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.

- I. If probable cause has not been determined by a magistrate:
 - a. A person arrested for misdemeanor must be released on bond, in an amount not to exceed \$5,000, not later than 24 hours after the person's arrest.
 - b. A person arrested for a felony must be released on bond, in an amount not to exceed \$10,000, not later than 48 hours after the person's arrest.
 - c. If requested by the state, the magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

The magistrate shall set the amount of bail and any conditions of bond for the accused, if bail is allowed by law and has not been set by the court of magistrate issuing a warrant.

The magistrate shall make a record of the following:

1. The date and time the accused was arrested and the date and time when he/she was brought before the magistrate.
2. Whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel.
3. Whether the accused requested appointment of counsel.

If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form (“**Exhibit B**”) and any other forms requesting appointment of counsel (“**Exhibit A or A-1**”) to the Appointing Authority to wit: The Court Administrator of Wichita County. The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel along with a list of defendants that requested for court appointed counsel at the time of magistration. Delivery shall be accomplished as follows: The Bond Management Office is to obtain the forms (“**Exhibit A or A-1**”) immediately after magistration and submit the forms through the Court Administrator Queue in the Odyssey System. The Court Administrator will then process the forms accordingly.

The Court Administrator as the appointing authority shall make an initial determination of indigence and recommend the appointment of counsel within three working days, if the defendant is indigent. After the determination has been made, the Court administrator shall provide the completed forms and the initial determination to the judge making court appointments for the decision of appointment of counsel. The Order Appointing Attorney is attached hereto as “**Exhibit C**”.

If a request for counsel was made at magistration, the Court Administrator shall forward the magistrate form and any other forms requesting appointment of counsel to the appropriate clerk to be filed in the case file.

If request for counsel was not made at magistration but the defendant requests court appointed counsel at the subsequent time, such request shall be made either to a member of the jail staff, if the defendant is incarcerated, or to the Court Administrator's Office, if the defendant has been released on bail. In either event, the defendant's application shall be completed in its entirety and signed under oath by the defendant. The jail staff and the Court Administrator's Office, as applicable, shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided. An application for court appointed counsel is subject to denial unless all questions are answered by the defendant. The trial courts of Wichita County, Texas, reserve the right to require the defendant's to appear in open court for the purpose of inquiring into the defendant's indigence or for the purpose of completing the required application.

II. Indigence Determination Standards

10/21/2019

A. Definitions, as used in the rule:

- i. "Indigent" means a person who is not financially able to employ counsel.
- ii. "Net household income" means all income of the accused and spousal income actually available to the accused. Such income shall include: take-home wages and salary(gross income earned minus those deductions required by law or as a condition of employment); net self-employment income(gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts, seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the accused has no income or lesser income.
- iii. "Household" means all individuals who are actually dependent on the accused for financial support.
- iv. "The cost of obtaining competent private legal representation" includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

Eligibility for Appointment

- i. An accused is presumed indigent if any of the following conditions or factors are present:
 1. At the time of requesting appointed counsel, the accused or accused's dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
 2. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.
- ii. An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused's dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority (the Court Administrator) shall take into account:
 1. the nature of the criminal charge(s),
 2. anticipated complexity of the defense,
 3. the estimated cost of obtaining competent private legal representation for the matter(s) charges;
 4. the amount needed for the support of the accused and the accused's dependents,
 5. accused's income,
 6. source of income,
 7. assets and property owned,
 8. outstanding obligations,
 9. necessary expenses,
 10. the number and ages of dependents, and spousal income that is available to the accused.
 11. spousal income that is available to the accused.
- iii. Factors NOT to be considered in determining indigence:

1. The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent,
 2. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent,
- iv. Only the accused's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

B. Indigence Proceedings:

- i. The Court Administrator can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.
- ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
 1. determining if accused is (or is not) indigent; or
 2. impeaching direct testimony of accused regarding the accused's indigence.
- iii. Request by the Court Administrator for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Parts I and IV of these rules and contained in Code of Criminal Procedure Article 1.051.
- iv. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstance occurs.
 1. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:
 - a. evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or

- b. additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.
- 2. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.
- v. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

III. Minimum Attorney Qualifications

10/21/2019

The judges hearing criminal cases shall establish attorney appointment lists for the following categories of offenses. Attorney's may apply for and be placed on multiple lists. The Application for Attorney Appointment List-Wichita County is attached hereto as "**Exhibit D.**" to be eligible for an appointment list, an attorney must meet the following minimum requirements:

Misdemeanor Qualification Requirements:

- 1. All attorneys on the appointment list must ensure all information on their application is correct;
- 2. An attorney must be a licensed practicing attorney, have experience in criminal law and a member in good standing of the State Bar of Texas;
- 3. An attorney shall complete a minimum of 6 hours of CLE in the area of criminal law and procedure each year. All attorneys on the appointment list must file a certificate with the Court Administrator's office each year attesting to the completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in the criminal law. Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity

completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;

4. An attorney must have experience (either as a prosecutor or defense counsel) in criminal law;
5. An attorney may not have been found to be ineffective counsel by an appellate court;
6. An attorney must not have been determined, by formal proceedings or otherwise, to provide ineffective criminal representation by any trial court;
7. An attorney must maintain a permanent address other than a post office box and an office capable of receiving email, fax, telephone calls, and telephone messages.
8. An attorney must have the ability to produce typed motions and orders.
9. An attorney shall notify the Court Administrator's office promptly, in writing, of any matter that would disqualify the attorney by law, regulation and rule or under these guidelines from receiving appointments to represent indigent defendants.

State Jail and Third Degree Felony Case Qualification Requirements

1. An attorney must meet general requirements for misdemeanor appointments;
2. An attorney must have at least one year's experience (either in prosecution or defense) in criminal misdemeanor or felony representation;
3. An attorney must have exhibited proficiency in providing quality representation in criminal cases;

First and Second Degree Felony Case Qualification Requirements

1. An attorney must meet the general requirements for State Jail and Third Degree Felony appointments
2. An attorney must have tried to verdict 2 or more criminal trials
3. Have demonstrated superior quality representation to defendants in criminal cases to such an extent that the court feel the attorney can provide representation equal to or greater than the attorneys currently on the First and Second Degree Felony list.

Capital Case Qualification Requirements

1. Lead trial counsel must be on the list of attorneys approved by the local selection committee of this Administrative Judicial Region for appointment as lead counsel in death penalty cases. As provided in Article 26.052, Texas Code of Criminal Procedure.
2. Second chair counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as lead trial counsel or second chair counsel in death penalty cases. As provided in Article 26.052, Texas code of Criminal Procedure.
3. Appellate counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

Appeal Qualification Requirements

An attorney must meet at least one of the following criteria:

1. Be currently board certified in criminal law by the Texas Board of Legal Specialization; or
2. Have personally authored and filed at least three criminal appellate briefs or post-conviction writs of habeas corpus; or
3. Have worked as a briefing clerk of an appellate court for a period of at least one year; or
4. Have demonstrated superior quality appellate representation to defendants in criminal cases to such extent that the Courts feel the attorney can provide representation equal to or greater than the attorneys on the appellate list.

Approval for Appointment Lists

Felony, Misdemeanor and Appellate Lists-An attorney must be approved by a majority of the County and District Court Judges hearing criminal cases.

The attorneys assigned by the Public Defender's Office to handle the specific cases, shall be required to meet the same standards for appointment.

Removal from appointment List

The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges. A majority of the judges trying criminal cases in the county may remove an attorney from consideration for appointments, if the attorney intentionally or repeatedly does not fulfill the duties required by law rules, local rules, or provisions for providing effective assistance of counsel or fails to comply with the requirements for inclusion on the approved list for counsel for indigent accused persons, the judges shall provide the attorney with reasonable notice of their intention to consider sanctions or removal from the list of approved attorneys.

An attorney requesting to be removed from the list of eligible court appointed attorneys shall make such request in writing and deliver it to the Court Administrator. Upon receipt of the request, the Court Administrator shall immediately remove the attorney's name from the list and notify the judges that the name has been removed. Once the attorney's name has been removed from the list of eligible court appointed counsel, the attorney shall not be appointed as counsel until and unless the attorney successfully reapplies for inclusion on list.

The attorney shall not be permitted to withdraw as attorney of record in any pending case except upon written motion and leave of court in such case.

Reinstatement to Appointment Lists

An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this plan.

An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

Duties of Appointed Counsel

Appointed counsel shall;

1. Make every reasonable effort to:

- a. Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
 - b. Interview the defendant as soon as practicable after the attorney is appointed.
2. Represent the defendant until:
 - a. Charges are dismissed;
 - b. The defendant is acquitted;
 - c. Direct appeals are exhausted; or
 - d. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.
3. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
4. Brief the law of the case and be prepared to represent any legal defense(s) that may be reasonably and arguably available to the defendant;
5. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
6. Be prepared to try the case to conclusion either with or without a jury;
7. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
8. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and
9. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case; and
10. Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
11. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.
12. Not later than October 15 of each year, and on a form prescribed by the Texas Indigent Defense Commission, each attorney accepting appointments shall submit to each appointing county information, for the preceding fiscal year, that describes the percentage of the attorneys' practice time that was dedicated to work based on the appointments accepted in each county under C.C. P., Art. 26.04(j) and Title 3, Family Code. A submission shall be delivered to each county in which an attorney accepts appointments.

Prompt Appointment of Counsel

10/21/2019

IV. Appointment of Counsel

A. Prompt Appointment of Counsel

1. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the third working day after the date on which the Court Administrator receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.
2. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
3. For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the defendant with the appropriate forms for requesting counsel. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made.

B. Appointment Authority

The appointing authority for all cases is the County and District Judges, assisted by the Court Administrator.

C. Defendants Appearing Without Counsel

If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement

1. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.

2. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant
 - a. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
 - b. Waived or has waived the opportunity to retain private counsel.
3. The attorney representing the state may not:
 - a. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
 - b. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:
 - i. Has been given a reasonable opportunity to retain counsel; or
 - ii. Waives or has waived the opportunity to retain private counsel.

D. Waiver of the Right to Counsel

A defendant may voluntarily and intelligently waive the right to counsel.

A waiver obtained in violation of sub-section C above is presumed invalid.

If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

"I have been advised this ____ day of ____, 2____, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an

*attorney being appointed for me. I hereby waive my right to counsel.
(Signature of defendant)”*

A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

Attorney Selection Process

10/21/2019

V. Attorney Selection Process

Appointment of Counsel

The appropriate judge making an appointment shall make the appointment using a system of rotation from among the first five names on the appointment list of the attorneys qualified to handle that type of case, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:

1. The defendant requesting counsel does not understand english, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available;
2. The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or
3. Other good cause exists for varying from the list.

Once appointed, with the exception of the County Public Defender's Office, an attorney's name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

Public Defenders Office

The District and County Judges may, from time to time, adjust the percentage of cases received by the County Public Defender's Office. The County Public Defender's Office 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 will be increased for the other categories of offenses to maintain an adequate workload. The appointing authority shall give priority to appointing available public defenders office to represent indigent defendants pursuant to SB 583. SB 583 does three main things:

1. Clarifies that the priority appointment statute applies in capital case appointments
2. Requires good cause not to appoint a public defender office; and
3. Requires local indigent defense plan to include priority appointment for any public defender's office in the county

The Public Defender's office may refuse to accept appointment to a case, if:

- a. A conflict of interest exists;
- b. The office has insufficient resources to provide adequate representation;
- c. The office is incapable of providing representation in accordance with the rules of professional conduct; or
- d. The office shows other good cause for refusing appointment.

Judicial Removal from Case

The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following

1. Counsel's failure to appear at a court hearing
2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
3. Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
4. Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
5. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;

6. The defendant requests an attorney, other than trial counsel, for appeal; or
7. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

Appointment of Replacement Counsel

Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan

Fee and Expense Payment Process

10/21/2019

VI. Fee and Expense Payment Process

Compensation

Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county. The Schedule of Fees for Compensation of Appointed Counsel for Indigent Defendants is attached hereto as "Exhibit E".

Payment Process

No payment of attorney's fees will be made other than in accordance with the rules set forth below.

1. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered. The Applications for Compensation of Court-Appointed Counsel are attached hereto as "Exhibit F" (Fixed rate) and "Exhibit G" (Hourly Rate).
2. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.

If a judge disapproves the requested amount of payment, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.

An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.

The Order for Compensation of Court-Appointed Counsel is attached hereto as "Exhibit H".

Payment of Expenses

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

Procedure with Prior Court Approval

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

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

The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

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

Procedure without Prior Court Approval

Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

Appointment of Counsel on Out of County Warrant

SB 1517 Implementation

At the Article 15.17 hearing("magistration"), the magistrate must inform a person arrested on an out-of-county warrant of the procedures for requesting counsel and must ensure reasonable assistance in completing the necessary forms. If possible, the magistrate should provide the arrestee with the financial form from the county where the warrant originates. Financial forms of individual counties may be obtained from the TIDC website as a form at the end of the respective jurisdiction indigent defense plan: <http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx?cid=255>

A magistrate must transmit requests for counsel to the person authorized to appoint counsel in the warrant issuing county. TIDC maintains a list of these contacts as submitted by each county at:

<http://tidc.tamu.edu/public.net/Reports/OutofCountyArrestContacts.aspx>

The warrant issuing county must appoint counsel for those determined to be indigent within:

- 1 working day (counties with a census population of 250,000 or more)
- 3 working days (counties with a census population under 250,000)

For the arresting county, counsel must be appointed 11 days after the arrest date for matters under Chapter 11 (Habeas Corpus) or 17 (Bail), Code of Criminal Procedure, if a defendant is still in the local jail and the defendant has no counsel in the arresting county.

The arresting county may seek reimbursement from the warrant issuing county for the actual costs paid to appointed counsel.

Text of SB1517 may be found at:

<http://www.capitol.state.tx.us/tlodocs/84R/billtext/html/SB01517F.htm>

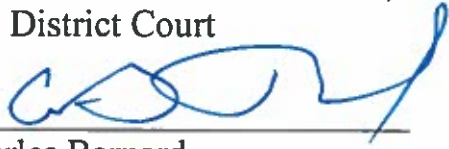
IT IS ORDERED by the District Judges, County Court at Law Judges, and County Judge of Wichita County, Texas.

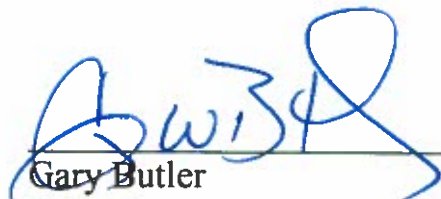
SIGNED the 31 day of October, 2019.

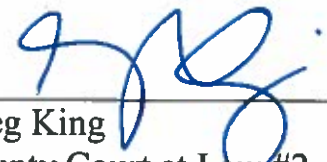


Jeff Mcknight
30th District Court

(Seat vacant as of submission)
78th District Court



Charles Barnard
89th District Court

Gary Butler
County Court at Law #1

Greg King
County Court at Law #2

Woodrow Gossom
Wichita County Court

USE PENS ONLY - NO PENCILS

ANSWER ALL QUESTIONS

BOOK-IN # _____

UNSWORN DECLARATION OF INABILITY TO HIRE COUNSEL AND REQUEST FOR COURT-APPOINTED COUNSEL

(For use by inmates only)

1. What is your full legal name? _____
What is the street address, town, state, and zip code where you live or stay? (MUST LIST ADDRESS) _____
What is your date of birth? _____
2. Are you a U. S. citizen? _____ If you answered "No" to this last question, what is your country of citizenship? _____
3. What is the telephone number where you live or stay? _____ What is your cell phone number? _____
4. Who pays for the place where you live or stay? _____ How is this person related to you? _____ How much do they pay each month? \$ _____ How many people live in the place where you live? _____ About how much money do all the adults that you live with make together each month? \$ _____
5. Do you have any children? _____ How many? _____ Do your children live with you? _____ Do you get child support? _____ How much each month? \$ _____ If your children do not live with you, do you pay child support? _____ How much each month? \$ _____
6. Do you have a job? _____ Where do you work? _____ How much do you get paid? \$ _____ per (mo./wk./hr.) if paid per hr. how many hrs. do you work per wk. _____
7. If you don't work right now, when is the last time you had job? _____ Where did you work? _____ When is the last time you got paid? _____ How much? _____
8. Do you get any welfare, disability, pension or unemployment benefits? _____ What kind? _____ Total each month? \$ _____
9. Do you own a car, truck or motorcycle? _____ Which? _____ Is it (are they) paid for? _____ How much is it (are they) worth? \$ _____
10. Do you own a house or any land? _____ Which? _____ Is it paid for? _____ What is it worth? \$ _____
11. Do you have any cash anywhere? _____ How much? \$ _____ Do you have any bank accounts? _____ How much money do you have in the bank? \$ _____
12. Are you in jail? _____ How much is your bond? \$ _____ Can you make your bond? _____ Can anyone else make your bond? _____ Who? _____ If you have already made bond, who is your bondsman? _____ How much are you paying your bondsman? \$ _____ ea. mo./wk.
13. Was anybody else charged with this offense with you? _____ Who? _____

I HEREBY AUTHORIZE THE COURT ADMINISTRATOR TO VERIFY THIS INFORMATION FROM ANY SOURCE.

"My name is _____ . My date of birth is _____ .

My inmate identifying number, if any, is _____ . I am presently incarcerated in the Wichita County Jail in Wichita County, Texas. I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct."

Executed the _____ day of _____ , _____ .

DECLARANT

I DECLINE TO COMPLETE THIS APPLICATION _____ (Defendant's initials)

USE INK PENS ONLY - NO PENCILS

ANSWER ALL QUESTIONS

BOOK-IN # _____

DECLARATION OF INABILITY TO HIRE COUNSEL AND REQUEST FOR COURT-APPOINTED COUNSEL

**"I STATE, UNDER OATH AND SUBJECT TO BEING CHARGED WITH PERJURY, THAT THE FOLLOWING
ANSWERS TO THE FOLLOWING QUESTIONS ARE TRUE. I AM ASKING FOR COURT-APPOINTED COUNSEL."**

1. What is your full legal name? _____
What are the street address, town, state, and zip code where you live or stay? (MUST LIST ADDRESS) _____
What is your date of birth? _____
2. Are you a U. S. citizen? _____ If you answered "No" to this last question, what is your country of citizenship? _____
3. What is the telephone number where you live? _____ What is your cell phone number? _____
4. Who pays for the house or apartment where you live? _____ How is this person related to you? _____ How much do they pay each month? \$ _____ How many people live in the house or apartment where you live? _____ About how much money do all the adults that you live with make together each month? \$ _____
5. Do you have any children? _____ How many? _____ Do your children live with you? _____ Do you get child support? _____ How much each month? \$ _____ If your children do not live with you, do you pay child support? _____ How much each month? \$ _____
6. Do you have a job? _____ Where do you work? _____ How much do you get paid? \$ _____ per _____ (mo./wk./hour). How many hours do you work per week? _____
7. If you don't work right now, when is the last time you had job? _____ Where did you work? _____ When is the last time you got paid? _____ How much? \$ _____
8. Do you get any welfare, disability, pension or unemployment benefits? _____ What kind? _____ Total each month? \$ _____
9. Do you own a car, truck or a motorcycle? _____ Which? _____ Is it (are they) paid for? _____ How much is it (are they) worth? \$ _____
10. Do you own a house or any land? _____ Which? _____ Is it paid for? _____ What is it worth? \$ _____
11. Do you have any cash anywhere? _____ How much? _____ Do you have any bank accounts? _____ How much money do you have in the bank? _____
12. Are you in jail? _____ How much is your bond? _____ Can you make your bond? _____. Can anyone else make your bond? _____ Who? _____ If you have already made bond, who is your bondsman? _____ How much are you paying your bondsman? \$ _____ each month/week?
13. Was anybody else charged with this offense with you? _____ Who? _____

I HEREBY AUTHORIZE THE COURT ADMINISTRATOR TO VERIFY THIS INFORMATION FROM ANY SOURCE.

Defendant's Signature

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned authority, on _____, 20_____.

Notary Public/Magistrate

Commission Expires: _____

EXHIBIT A

Application for Attorney Appointment List – Wichita County

Lists applying for (check one or more):

Adult

1st and 2nd degree felonies _____
3rd degree felonies _____
State jail felonies _____
Misdemeanor _____
Appellate _____

Juvenile

1st and 2nd degree felonies _____
3rd degree felonies _____
State jail felonies _____
Misdemeanors _____
Appellate _____

Other

Child custody – CPS _____
Child support cases _____

Name: _____

Bar Card #: _____

Mailing address: _____

Street address: _____

Phone nos: (W) _____ (C) _____ (Fax) _____

Email address: _____

Year licensed to practice law: _____

Are you fluent in any language other than English? _____

Which language(s)? _____

Are you Board Certified in any areas of the law? _____

Which area(s)? _____

Give approximate numbers for the following types of matters in which you were the attorney for the defendant or the state:

Felony:

Capital Murder (Death penalty)

Jury trials tried: _____ As lead attorney: _____ As second chair: _____

Other felonies:

Jury trials tried: _____

Plea hearings: _____

Revocation hearings tried: _____

Habeas corpus hearings: _____

Appellate briefs prepared: _____

Appellate cases argued: _____

Misdemeanor:

Jury trial tried: _____

Plea hearings: _____

Revocation hearings tried: _____

Appellate briefs prepared: _____

Appellate cases argued: _____

Juvenile:

“EXHIBIT E”
SCHEDULE OF FEES FOR COMPENSATION OF APPOINTED COUNSEL
FOR INDIGENT DEFENDANTS – WICHITA COUNTY

REVISED 2017 Effective 1-1-18

Pursuant to the provisions of Art. 26.05, Texas Code of Criminal Procedure, and other applicable statutes, the following Schedule of Fees is hereby adopted by the County, County Courts at Law and District Judges of Wichita County, Texas, for use in criminal and civil cases where required by law. **This Schedule of Fees is effective January 1, 2018.**

Fixed rate for agreed criminal pleas	
Misdemeanors	\$250.00
Felonies	\$450.00
CPS adversary hearings	\$275.00
Subsequent CPS hearings	\$175.00
Juvenile detention hearings	\$150.00
Fixed rate for juvenile adjudication and/or disposition hearings	\$350.00
Attorney General (Title IV-D) child support hearings	\$175.00
Hourly rate	\$ 75.00 - \$125.00*
Daily rate for actual trial in court	\$750.00

***Requests for compensation that are submitted on an hourly rate shall be submitted in increments of 1/10th of an hour.**

REASONABLE EXPENSES, INCLUDING EXPENSES FOR INVESTIGATION AND FOR MENTAL HEALTH AND OTHER EXPERTS, SHALL BE REIMBURSED PURSUANT TO THE PROVISIONS OF ART. 26.05 (d), CCP.

Compensation for court-appointed counsel will be approved on a case by case basis, depending upon the time and labor required, the complexity of the case and the experience and ability of the appointed counsel.

The following criteria shall be considered in calculating the attorney fees:

1. Time spent in court making an appearance
2. Time spent in trial
3. Reasonable and necessary time spent out of court, supported by documentation as required by the Court
4. Time spent in the preparation of an appellate brief

The forms for claiming fixed rate compensation and/or expenses reimbursement, and for claiming hourly rate compensation and/or expenses reimbursement are available in the Court Administrator's Office on the third floor of the Wichita County Courthouse. **ALL APPLICATIONS FOR COMPENSATION MUST BE SUBMITTED ON ONE OF THESE FORMS OR ON A SUBSTANTIALLY SIMILAR FORM IN ORDER TO BE APPROVED.**

CAUSE NO. _____

THE STATE OF TEXAS

§
§
§
§
§

IN THE _____

VS.

OF

WICHITA COUNTY, TEXAS

ATTORNEY'S FEES ORDER

I hereby approve and order the payment of attorney's fees to _____

_____, the attorney of record in this cause, in the sum of \$ _____,

for work performed from _____, 20__ through _____, 20__.

SIGNED the _____ day of _____, 20__.

JUDGE PRESIDING

NOTE TO COURT APPOINTED ATTORNEY:

Complete one of the following:

Record the above fee to:

Social Security Number: _____

Street or P.O. Address: _____

City, State & Zip Code: _____

Or

Firm ID #: _____

Firm Name: _____

Firm Address: _____

City, State & Zip Code: _____

Exhibit H

THE STATE OF TEXAS

v.

Magistrate No. _____

- ☐ Misdemeanor – Class: _____
☐ State Jail Felony
☐ Felony – Degree: _____
☐ Indictment

**CERTIFICATION OF MAGISTRATE'S WARNING, PROBABLE
CAUSE DETERMINATION, AND ORDER SETTING/DENYING BOND**

This is to certify that at the time and date entered below, the above-named accused appeared before me in Wichita County, Texas, at which time and place, I administered the following warnings as required by the Texas Code of Criminal Procedure:

You are charged with the offense of _____.

- ☐ An affidavit signed by _____ has been filed in this cause.
☐ A teletype from _____ County, _____ has been received.
☐ An indictment has been returned against you.

You have the following rights:

- ☐ You have the right to hire your own attorney. You have the right to request appointment of an attorney if you are indigent and cannot afford to hire your own.
☐ You will be allowed a reasonable time and opportunity to consult with you attorney if you desire.
☐ You have the right to have your attorney present during any interviews with peace officers or attorneys representing the State.
☐ You have the right to remain silent.
☐ You are not required to make a statement and any statement made by you may be used against you.
☐ You have the right to stop any interview at any time.
☐ If you are charged with a felony offense, **that has not been indicted**, you have the right to an examining trial.

Are you unable to hire your own attorney and do you request that an attorney be appointed to represent you?

- ☐ No.
☐ Yes. The forms for requesting a court-appointed attorney were furnished and the procedures for requesting a court-appointed attorney were explained.
☐ The accused requested and was provided assistance in completing the forms.

Are you able to speak and understand the English language?

- ☐ Yes. ☐ No. _____ interpreted in the _____ language.

Are you deaf?

- ☐ No. ☐ Yes. _____ interpreted.

Sufficient facts have been presented to me under oath by affidavit or sworn testimony to show that probable cause exists for the continued detention of the accused.

Bond is: ☐ Set at \$ _____ (as endorsed on the indictment)

☐ Denied

☐ P.R. Bond

Place: _____

Time: _____ A.M. P.M.

Date: _____, 20 _____

☐ Justice of the Peace, Pct. _____ Place _____

☐ Magistrate, Wichita County, Texas

Exhibit B

CAUSE NO. _____

THE STATE OF TEXAS

§
§
§
§
§

IN THE _____ COURT

V.

OF

WICHITA COUNTY, TEXAS

ORDER APPOINTING/DENYING ATTORNEY

Pursuant to application for court appointed counsel for indigent defendant heretofore presented to the Court, and after having given the same due consideration, the Court hereby makes the following order in the above entitled and numbered cause.

_____ It is ordered that (the Public Defender or _____, a practicing and qualified attorney) be, and said attorney is hereby appointed as attorney for the defendant in the above entitled and numbered cause. This appointment is effective the date of this order, or such earlier date as actual notice of such appointment may have been given to said attorney, if the same appears anywhere in the record of this cause.

_____ If the Public Defender is not appointed, said attorney is among the next five names on the applicable appointment list for the offense charged.

_____ Said attorney is not among the next five names on the applicable appointment list for the offense charge and the good cause for this attorney to be appointed is:

_____ Denied - Not Indigent

_____ Denied- Incomplete

_____ Denied -Refused to fill out application

_____ Denied- Pro Se

Signed this _____ day of _____, 20____.

JUDGE PRESIDING

COPIES MAILED TO:

Attorney: _____

Attorney's Phone # _____

Court Administrator

Defendant: _____

Exhibit C

No. _____

THE STATE OF TEXAS

§
§
§
§
§

IN THE _____

V.

OF

WICHITA COUNTY, TEXAS

ORDER FOR COMPENSATION OF COURT-APPOINTED COUNSEL

Pursuant to Article 26.05, Texas Code of Criminal Procedure, and in accordance with the Schedule of Fees for Compensation of Appointed Counsel currently adopted by the County and District Courts of Wichita County, Texas, the Court finds that _____, court-appointed counsel for the Defendant in this cause, should be paid a reasonable attorney's fee for the performance of legal services rendered in this cause, based on the time and labor required, the complexity of this particular case, and the ability and experience of the appointed counsel. The Court further finds that the undersigned attorney should be reimbursed for reasonable expenses incurred herein.

IT IS, THEREFORE, ORDERED AND DECREED that the Wichita County Treasurer pay, from the General Fund of Wichita County, Texas, the total sum of \$_____ to the above-named court-appointed counsel, representing reasonable attorney's fees in the amount of \$_____ and reasonable expenses incurred with Court approval in the amount of \$_____, as set out in the Application for Compensation of Court-Appointed Counsel submitted to the Court on the ____ day of _____, 20____, unless the attorney files a motion appealing this Order with the Presiding Judge of the 8th Administrative Judicial Region.

If such appeal is filed, IT IS ORDERED AND DECREED that the Wichita County Treasurer pay, not later than the 45th day after the application for payment was submitted, from the General Fund of Wichita County, Texas, the amount that is approved by the Presiding Judge of the 8th Administrative Judicial Region and is accordance with the Fee Schedule of Wichita County, Texas.

If checked, written findings regarding the amount ordered paid are set forth on Exhibit "A" attached hereto.
SIGNED the ____ day of _____, 20____.

Attorney's address

JUDGE PRESIDING

Attorneys' SSN/EIN

Exhibit H

No. _____

VS.

* IN THE
* (Court)
*
* OF
*
* WICHITA COUNTY, TEXAS

**APPLICATION FOR COMPENSATION
OF COURT-APPOINTED COUNSEL
(HOURLY RATE)**

I was appointed and represented _____ the defendant, child, or parent in this cause. I request reimbursement of reasonable and necessary expense and payment of attorney fees in accordance with the following itemized schedule:

Reasonable and necessary time spent out of court. _____ hrs.

Time spent out of court in pre-trial proceedings in which sworn oral testimony was elicited (depositions, etc.). _____ hrs.

Time in court making court appearances other than the final hearing or trial _____ hrs.

Time spent in final hearing or trial _____ hrs.

Time spent in preparation of an appellate brief to the Court of Appeals, Court of Criminal Appeals, or Texas Supreme Court _____ hrs.

Reasonable and necessary expenses incurred with court approval. \$ _____

I am familiar with the minimum and maximum hourly rates for trial preparation and request to be paid at the rate of \$ _____ per hour. Justification for payment in excess of the minimum rate is included in the attached itemized statement.

An itemized statement, detailing the time spent in and out of court and all reasonable expenses incurred is attached hereto as "Exhibit A". I have not previously received payment for these services.

Submitted this _____ day of _____, 20____.

Court Appointed Attorney

Exhibit G