

Smith County District Court Indigent Defense Plan

Preamble and Order Adopting Plan

The District Court Judges of Smith County, Texas (hereinafter “Judges”) are committed to upholding the legal rights of the accused, while at the same time serving as good stewards of the public funds that are expended in the justice system.

This document is the Smith County Fair Defense Plan for the District Courts (“Plan”) and is adopted to assure compliance with the Texas Fair Defense Act and related statutes. Accordingly, pursuant to the requirements of the Texas Code of Criminal Procedure, Arts. 1.051, 26.04, 26.047, 26.05, 26.052, and all other relevant statutes, the Judges hereby adopt these rules for the timely and fair appointment of counsel for indigent accused persons in Smith County effective upon its signing.

This plan supersedes all other plans and standards previously adopted by the Judges.

Prompt Magistration

A. Arresting Officer’s Responsibilities

1. 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.[Art. 14.06(a), CCP]
2. 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.

B. Prompt Magistration

1. The accused, when charged with an offense punishable as a felony or a misdemeanor offense punishable by confinement, must be brought before a magistrate as described in Article 17.023 of the Code of Criminal procedure without necessary delay, but within 48 hours of arrest. [Art. 14.06(a), CCP]
2. If an accused person, arrested for a misdemeanor, without a warrant, has not had probable cause determined by a magistrate within 24 hours of arrest, then they must be released on a surety bond in an amount of no more than \$5,000, on a personal bond in an amount of no more than \$5,000 [Art. 17.033(a), CCP], or without bail upon order by the magistrate with an affirmative finding of “no probable cause.”
3. If an accused person, arrested for a felony, without a warrant, has not had probable cause determined by a magistrate within 48 hours of arrest, then they must be released on a surety bond of no more than \$10,000, or on a personal bond in an amount of no more than \$10,000,

[Art. 17.033(b), CCP], or without bail upon order by the magistrate with an affirmative finding of "no probable cause."

4. If requested by the state, a magistrate may postpone the release of the accused for not more than 72 hours after the accused's arrest if a probable cause determination has not been made, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.[Art. 17.033(c), CCP]
5. All accused persons initially arrested in another county on a Smith County warrant for a Class B misdemeanor or higher offense shall be presented before a magistrate within 48 hours of that accused's arrival at the Smith County Jail.

C. Affidavit of Indigence

1. All accused persons appearing in the Smith County Jail shall be eligible for consideration for appointment of court appointed counsel and shall be given the opportunity to complete an Affidavit of Indigence prior to magistration or as soon as practicable thereafter.
2. This document will contain such information as may be necessary to make a determination of the accused's ability to pay for an attorney.
3. Jail staff will provide any reasonable assistance needed to complete the forms necessary for the accused to request appointment of an attorney.[Art. 15.17(a), CCP]
4. At the time the appointed counsel is requested the accused will be deemed to have certified the accuracy of their affidavit for the purpose of determining eligibility for appointed counsel.

D. Use of Interpreters

The magistrate should determine if the accused can speak and understand English, or if the accused is deaf, and conduct any related proceedings in a manner consistent with Art. 38.30 and 38.31. [Art. 15.17(a), CCP]

1. If it appears that an arrested person cannot understand, speak, read, or write the English language, the magistrate shall appoint an interpreter to interpret the proceedings, including a qualified telephone interpreter. Only licensed and statutorily qualified interpreters shall be used for the provision of Spanish language services. [Tex. Govt. Code § 57.002(d)(1)]
2. If it appears that an arrested person is deaf, the magistrate shall appoint a qualified interpreter to interpret the proceedings in any language that the person can understand, including but not limited to sign language.

E. Magistrate's Duties

1. 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.
2. If probable cause has not been determined by a magistrate, the provisions outlined above shall apply.
3. If probable cause is found to exist, or the individual was arrested pursuant to an arrest warrant, bench warrant, capias, or other order of magistrate or judge, then, pursuant to Art. 15.17, TCCP, the magistrate shall:
 - a. Record the date and time the accused was arrested and the date and time when they were brought before the magistrate;
 - b. Inform the defendant of the charge(s) against him or her.
 - c. In clear language, inform the accused of the following rights:
 1. Right to retain counsel;
 2. Right to remain silent;
 3. Right to not make a statement and if he makes a statement, it can be used against him or her in court;
 4. Right to have an attorney present during any interview with peace officers or attorneys representing the state;
 5. Right to terminate the interview at any time;
 6. Right to an examining trial if charged with a felony offense; and
 7. Right to request the appointment of counsel if they are indigent and if the accused cannot afford an attorney, and procedures necessary for requesting such appointment.

F. Right to Counsel

1. Regarding the right to the right to counsel, a record must be made (and shall be preserved as required by Art. 15.17, CCP) that:
 - a. The accused was informed of their right to counsel and their right to request appointment of counsel if unable to afford counsel, [Art. 1.051(f-2), 15.17(a), 15.17(e)(1), CCP];
 - b. The accused was informed of the procedures for requesting a court appointed attorney;
 - c. The magistrate asked whether the accused wants to request a court appointed attorney, [Art. 15.17(e)(2), CCP]; and
 - d. Whether or not the accused requested an attorney be appointed. [Art. 15.17(e)(3), CCP]

G. Attorney Election

1. If the accused advises the magistrate that they intend to hire his or her own attorney or declines to complete an Affidavit of Indigence, the magistrate shall advise the accused of the procedures for making a request for a court appointed attorney at any time after the initial magistration.[1 TAC §174.51]
 - a. A request for a court appointed attorney by an accused person incarcerated in the Smith County Jail for a Class B misdemeanor or higher offense, shall be brought to the attention of the applicable court or magistrate within 24 hours of the request being submitted to jail personnel.
2. If the accused advises the magistrate that they are requesting a court appointed attorney, the magistrate shall:
 - a. Record the request on the magistration form;
 - b. Request the accused certify the accuracy of their Affidavit of Indigence under oath;
 - c. Obtain, under oath, such other information as may be necessary to make a determination of the accused's ability to pay for an attorney; and
 - d. Assist the accused in completing any paperwork necessary to request the appointment of an attorney.
 - e. The applicable Court or their designee shall then, by the end of the third working day of receipt of the affidavit, appoint or deny the request for court appointed counsel. [Art. 1.051(c) & 15.17(a), CCP]

H. Bail Setting

If bail is allowed by law, the magistrate shall set the amount of bail and any conditions of bond for the accused in compliance with any statutory or judicial requirements.

Indigence Determination Standards

A. Definitions.

1. "Indigent" means a person who is not financially able to employ counsel.
2. "Net Household Income" means the accused's income and any spousal income that is available to the accused, and includes:
 - a. Take-home wages and salary (gross income earned less any deductions required by law or as a condition of employment);
 - b. Net self-employment income (gross income minus business expenses and any deductions required by law or as a condition of operating the business);
 - c. Regular payments from government income maintenance program, alimony, child support, public or private pensions, veterans benefits, training stipends, military family allotments;
 - d. Food and/or rent received in lieu of wages, money which is received from tax refunds, gifts, one-time insurance payments or compensation for injury or property loss; and
 - e. Income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts.
3. "Non-exempt assets and property" include, but are not limited to, cash on hand, savings, checking accounts, stocks, bonds, certificates of deposit, and accounts at financial institutions.
4. "Household" means all individuals who are legal dependents of the accused.
5. "Legal Dependents" are individuals under the age of 18 or disabled individuals over the age of 18 for whom the accused has financial responsibility.

B. Determination of Eligibility for Appointment of Counsel

1. **Indigence Application.** An accused person's request for a court appointed attorney shall include a completed application and any requested supporting documentation (i.e. Affidavit of Indigence).

2. **Factors Considered.** To determine if an accused person is indigent, the judge or designee may consider the accused's net income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the accused.[Art. 26.04 (m), CCP]. If a finding of indigency is made, counsel shall be appointed.
3. **Factors not Considered.** In determining the accused's indigence status, the appointing authority shall not consider the following:
 - a. income of a victim of domestic violence or the income of a parent/guardian of a victim of domestic violence shall not be considered; Crimes of domestic violence include any offense committed against a child that is a member of the accused's household or any offense on any adult who is a member of the accused's household.
 - b. The Court or the Court's designee may not consider whether the accused has posted or is capable of posting bail, except to the extent permitted by law.
 - c. **Indigence Presumed.** An accused is presumed indigent if any of the following circumstances are present:
 - a. 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 (TANF), Supplemental Security Income (SSI), or public housing;
 - b. The accused is currently serving a sentence in a correctional facility, 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; or
 - c. The accused is currently represented by appointed counsel following a determination from any County or District Court in this county that the accused is indigent.
 - d. **Income and Asset Test.** An accused person is considered indigent if they meet either of the following criteria, and the asset test:
 - a. The accused's household income is at or below 125% of the latest poverty guidelines established and revised annually by the United States Department of Health and Human Services, and used for analysis for the purpose of this plan by Smith County Pretrial Services; or
 - b. The difference between the accused's monthly net household income and reasonably necessary expenses is less than \$500. Reasonably necessary expenses should include but are not limited to: rent or mortgage,

food/groceries, child support paid, car payment, car insurance, health insurance, medical bills, and utilities (water, electric, gas, phone); **and**

- c. The accused's non-exempt assets do not exceed \$5,000.00 for felony cases, or \$2,500.00 for misdemeanor cases.

4. **Special Circumstances.** An accused person who does not meet the standard for indigence above may still qualify for a court appointed attorney if the Court or its designee determines special circumstances exist.

- a. The Court or designee may consider unusual, excessive, or extraordinary medical expenses, the age or physical infirmity of household members, or other expenses.
- b. The Court may also consider the complexity of the case, the estimated cost of presenting a legal defense, the fees charged by lawyers in the community for providing defense services in similar cases, whether the accused has retained counsel in related legal matters (such as ALR, forfeitures, or writs), and any efforts the accused has made to retain an attorney.

5. **Transfer of Property.** If the Court is provided evidence that the accused has transferred property after the offense date, the Court shall determine the reason for the transfer of the property and whether adequate monetary consideration was received. If adequate monetary consideration was not received, the Court shall presume that the transfer was made for the purpose of establishing eligibility for court appointed counsel, unless the accused furnishes clear and convincing evidence that the transfer was made exclusively for another purpose. If a transfer was made either for the purpose of establishing eligibility or without adequate monetary consideration and the property is re-conveyed to the accused or an adjustment is made by which the accused receives full value, the accused shall, if otherwise qualified, be eligible to receive court appointed counsel.

C. In-Custody Defendants previously Determined Ineligible for Appointment

If an accused person remains in custody for more than ten days after being denied court appointed counsel, the Court shall review the Defendant's situation. Based on this review, an attorney will be appointed if appropriate. If an accused person remains in custody for more than twenty days after being denied appointed counsel and has not yet retained an attorney, they are presumed to be indigent, and an attorney shall be appointed by the Court.

D. Duration of Indigence Finding

An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless: (1) the State presents to the Court evidence of a material change in the accused's financial circumstances; (2) Such evidence is admitted before the Court at a hearing of which the accused is given notice and the right to appear; and (3) the Court finds the evidence supports the conclusion of a material change and the Court then enters that finding on the record.

E. Investigators and Expert Testimony

The guidelines established for the appointment of counsel also apply to the reimbursement of expenses incurred for the purpose of investigation or expert testimony, as approved by the Court.

Reimbursement by Defendant for Cost of Legal Services Provided

A. Provisions Governing Reimbursement

1. If the Court determines that an accused person 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 accused to pay during the pendency of the charge or, if convicted, as court costs the amount that it finds the accused is able to pay.
2. Before an accused person may be required to reimburse Smith County in whole or in part for the cost of legal services provided, as set forth in Article 26.05(g), (g-1) & (h) of the Texas Code of Criminal Procedure, the Court must comply with the applicable law by:
 - (a) Finding there to be affirmative evidence in the record of the accused's present ability to pay for all or part of legal services provided;
 - (b) Identify on the record the evidence on which that finding is based; and
 - (c) Find that there is evidence in the record of the specific costs incurred and expended by the County in that particular case as a result of the provision of appointed services.

Minimum Attorney Qualifications

The judges hearing criminal cases shall establish the standards for counsel seeking to represent indigent defendants in Smith County. Placement on, retention on, and/or removal from a defense contract or appointment list is at the discretion of the Judges hearing criminal cases. If at any time an attorney finds they have been appointed to a case that exceeds the attorney's competence or level of experience, the attorney shall notify the Court immediately, and the Court will review the case and take any action the Court deems necessary to ensure the adequate representation of the defendant.

The judge of a District Court, when necessary and for good cause, may waive particular qualifications to appoint an attorney who is otherwise competent to provide constitutionally adequate representation to an accused.

Any attorney who has earned and maintains their Board Specialization in Criminal Trial Law shall be deemed qualified to be appointed to any case and shall be exempt from showing compliance with the requirements below so long as that qualification is maintained.

A. Approval for Inclusion on Capital Appointment Lists

1. An attorney must be approved by the local selection committee of the Tenth Administrative Judicial Region for appointment as lead counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

B. General Qualifications for All Appointed Counsel

1. An attorney on a felony defense contract or appointment list must ensure all information on their application is current.
2. An attorney must be a licensed practicing attorney and a member in good standing with the State Bar of Texas and the Smith County Bar Association.
3. An attorney shall comply with annual reporting requirement by submitting online the "TIDC Attorney Reporting Form" to the Texas Indigent Defense Commission (<https://tidc.tamu.edu/AttorneyReporting/>). This form shall be submitted by October 15th of each year, and an attorney who fails to comply with this requirement may be removed from any list or contract to which they are admitted until the requirement is met.
4. An attorney shall provide proof of completing a minimum of 10 hours of Continuing Legal Education in the area of criminal law and procedure each year, to include 1 hour of CLE on Ethics in Criminal Cases. An attorney not current on CLE requirements will be suspended from receiving new appointments or serving on a contract until the CLE requirement is met.
5. All attorneys on the appointment list or any contract shall file by October 15th of each year the "Certificate of Compliance" with the Smith County Local Administrative Judge attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in criminal law;
 - a. The designated reporting period shall be from October 1st to September 30th;
 - b. Continuing legal education completed within the one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year;
 - c. Continuing legal education completed during any reporting period exceeding the minimum of 10 hours for such period may be applied to the following period's requirement – this carryover provision applies to one year only.
6. An attorney may not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States within the last 3 years.

7. An attorney must be a resident of Smith County or maintain within Smith County a location where clients may effectively visit with counsel. Counsel must also maintain a working telephone number and email address and provide the same to all Smith County District Courts.
8. An attorney must have the ability to produce typed motions and orders and access/use the state eFiling Portal.
9. An attorney shall notify the Local Administrative Judge of Smith County, in writing and within 48 hours, of any criminal arrests, charges, indictments, or convictions for any offense other than for Class C offenses, as well as any protective orders, bar disciplinary actions, professional sanctions, findings of professional misconduct, negligence or findings of ineffective assistance of counsel, or instances where they have been involuntarily removed from any other court appointment lists.

C. Appointment to State Jail Felony and Third Degree Felony Cases

1. An attorney shall meet General Qualifications for All Appointed Counsel above.
2. An attorney shall have a minimum of two years experience practicing criminal law;
3. An attorney shall have prior experience as 1st or 2nd chair in at least two criminal jury trials tried to verdict. At least one of the trials must have been for felony offenses.

D. Appointment to Second Degree Felony Cases

1. An attorney shall meet General Qualifications for All Appointed Counsel above.
2. An attorney shall have a minimum of five years experience practicing criminal law;
3. An attorney shall have prior experience as 1st or 2nd chair in at least four (4) criminal jury trials tried to verdict. At least two of the trials must have been for felony offenses.

E. Appointment to Any First Degree Felony Cases

1. An attorney shall meet General Qualifications for All Appointed Counsel above.
2. An attorney shall have a minimum of five (5) years experience practicing criminal law;
3. An attorney shall have prior experience as 1st or 2nd chair in at least seven (7) criminal cases tried to verdict before a jury. At least two (2) of the trials must have been for felony offenses at the third degree level or above.

F. Capital Case List Qualifications

1. Lead trial counsel shall be on the list of attorneys approved by the local selection committee of the Tenth 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 shall be on the list of attorneys approved by the local selection committee of the Tenth 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 shall be on the list of attorneys approved by the local selection committee of the Tenth Administrative Judicial Region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

G. Appointed Appellate Attorney Qualifications

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

1. Be currently Board Certified in Criminal Law or Criminal Appellate Law by the Texas Board of Legal Specialization; or
2. Have personally authored and filed at least three (3) criminal appellate briefs or post-conviction writs of habeas corpus; or
3. Have submitted an appellate writing sample approved by a majority of the Judges; or
4. Have worked as a briefing clerk of an appellate court for a period of at least one year.

H. Exceptions to Qualification Requirements

Exceptions to the above requirements may be made for attorneys with specialized skills or training, such as:

1. Fluency in a foreign language or sign language;
2. Specialized training or experience with Mental Health cases;
3. Experience with appellate law;
4. Other specialized qualifications as deemed necessary by the judge overseeing a case.

I. Appointment of Second Chair Counsel

Judges may appoint attorneys who are not currently on an appointment list or contract as co-counsel ("Second Chair") to represent an indigent defendant on a complex case or case that will be going to trial.

Prompt Appointment of Counsel

A. Appointing Authority

1. The District Court Judges hearing criminal cases are responsible for ensuring appropriate appointment of counsel to eligible accused persons requesting court appointed attorneys.[Art. 26.04(b), CCP]
2. The Judges may, as necessary, designate Smith County Justices of the Peace or County Court at Law Judges, for the purpose of appointing counsel as permitted by law.

B. Appointment, Generally

1. If authorized to appoint counsel, anyone receiving a request for appointment of counsel must act upon the request by the end of the third working day following receipt of the request for appointment of counsel. [Art. 15.17(a) and Art. 1.051(c)(2), CCP]
2. If not authorized to appoint counsel, the designee shall, without unnecessary delay but not later than 24 hours, transmit the request to the court authorized to appoint counsel. [Art. 15.17(a), CCP]
3. In the case of an accused person who is charged with both a misdemeanor and a felony case the misdemeanor court shall appoint the same attorney that was appointed to the felony case unless the same legal counsel is not available to accept the appointment, or for good cause shown.

C. Timing of Application/Appointment

1. Prompt Appointment by Court or Designee
 - a. Any request for court appointed counsel that is received by the Court or Court's designee, shall be reviewed for a determination of indigency and, if approved, counsel shall be appointed from the public appointment list or defense contract by the end of the third working day following the day the request was presented to the Court. [Art.1.051(c), CCP]
 - b. "Working day" means Monday through Friday, except for official Smith County holidays or closings.

- c. It is recognized that certain interruptions of this sequence may occur. The following provisions are intended to be used in the circumstances they describe:
 - a. All accused persons who do not request or complete a request for a court appointed attorney at the time of magistration shall be provided with the instructions necessary to subsequently complete a request for court appointed counsel.[1 TAC §174.51]
 - b. If an accused person is released on bail without making a request for court appointed counsel at the magistration hearing and the accused subsequently discovers an inability to afford counsel, that person may contact the appropriate Court to apply for court appointed counsel.
 - c. Requests for a court appointed attorney received from an accused for charges pending in another county shall be treated consistent with these procedures and consistent with the law governing the same.

2. Other Times when Application for Court Appointed Counsel May be Made

- a. If an accused person appears without counsel in any adversarial judicial proceeding that may result in punishment by confinement, the Court shall advise the unrepresented accused of the right to counsel and procedures for obtaining counsel.
 - a. If an accused person is determined by the Court or the Court's designee to not be indigent, the Court or the Court's designee shall deny the request for court appointed counsel and within a reasonable time notify the accused to retain private counsel.
 - b. In the event the application for appointment of counsel is granted, the Court or Court's designee will note the approval on the accused's application and notify the accused and the attorney of the appointment by telephone, electronic mail, or in person.
- b. An accused person may request court appointed counsel prior their first court appearance if the accused has not either previously requested or requested and was denied appointment of counsel at the time of magistration.
- c. An accused person may request court appointed counsel at their first court appearance if the defendant has not either previously requested, or requested and was denied, appointment of counsel at the time of magistration.
- d. If an accused person appears without counsel in any adversary judicial proceeding that may result in punishment by confinement, the Court may not direct or encourage the accused to communicate with the attorney representing the state until the Court advises the accused of the right to counsel and the procedure for requesting appointed counsel, and the accused has been given a reasonable opportunity to request appointed counsel.

- e. At the Judge's discretion, the accused may request court appointed counsel at any other time allowed by the trial court.

D. Defendants Arrested Out-of-County for Smith County Offenses:

1. Requests from an accused person arrested in another county on a Smith County warrant shall be acted upon within 24 hours of receipt of request. The information received from the county in which an accused is in custody will be used to determine eligibility for court appointed counsel.
2. Smith County shall ensure that designated personnel and contact information (facsimile, telephone, electronic mail, etc.) is maintained on the Texas Indigent Defense Commission (TIDC) Website.

E. Defendants arrested in Smith County for Out-of-County Warrants

1. For accused persons arrested on out-of-county warrants, the magistrate will ask the accused if they would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms for requesting counsel and assistance in completing the forms. The forms will be transmitted to the TIDC listed appointing authority in the county issuing the warrant within 24 hours of the request being made.[Art. 15.18(a-1), CCP]
2. Persons arrested on out of county warrants must be appointed counsel if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of the arrest.[Art. 1.051(c-1), CCP]
3. The designee shall inform an attorney appointed to represent an accused person on Smith County charges who also has out-of-county warrants that the arrested accused is being detained in the Smith County jail on the out-of-county warrants in addition to any local charges.

F. Defendants Detained Pursuant to Writs.

1. The magistrate shall appoint counsel for the purpose of writ matters under Chapter 11 of the Code of Criminal Procedure or bond matters under Chapter 17 of the Code of Criminal Procedure if the following conditions exist:
 - a. The accused who has been arrested on an out-of-county warrant is entitled to and requests appointment of counsel, and;
 - b. The accused has not been transferred or released into the custody of the county issuing the warrant before the 11th day after the date of arrest, and;
 - c. The accused has not been appointed counsel.

G. Mental Illness/Intellectual Disability.

If there is reason to believe that the accused lacks the present ability to request counsel or complete the necessary forms because of incompetency or other mental impairment, the 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.

Attorney Selection Process

A. Assignment of Attorneys in Non-Capital Cases

Given the lack of attorneys willing to represent indigent defendants in felony cases, as well as recognizing the need, to the extent possible, to make indigent defense a controlled and predictable expense for the County, the District Courts have adopted a plan for contract defense counsel in each court in which such cases are filed. Under this plan, the 7th, 114th, and 241st District Courts shall designate four, and the 475th District Court three, qualified attorneys who shall work on a month-to-month basis and who shall be paid \$10,000 per month per attorney for representation of indigent defendants before the court to which they are assigned. These attorneys shall provide representation to defendants charged with any offense in those courts with the exception of capital cases, unless the attorney agrees to do so. The judges of these courts shall further, by majority vote, designate two qualified attorneys to work under the same terms on all indigent appeals and writs filed in those four district courts.

In the event that the courts need to appoint an attorney other than their contract lawyers, the following method shall be used to assign attorneys for indigent defendants in non-capital cases:

1. The selection and appointment of counsel shall be in accordance with Article 26.04 of the Texas Code of Criminal Procedure and pursuant to these procedures.
2. When a finding of indigency has been made by the Court, legal counsel shall be appointed by the Court or the Court's designee on rotation from the appropriate appointment list or pursuant to the felony defense contract as soon as possible, but not later than the end of the first working day after the Court made the finding of indigency. "Working day" means Monday through Friday, except for official Smith County holidays or closings.
3. The Court or its designee shall appoint the lawyer whose name appears next in order on the public appointment list or under each court's contract rotation that corresponds to the most serious offense as currently charged, unless:
 - a. The accused is deaf or does not speak and understand the English language, in which case the next available attorney on the list speaking the accused's primary language will be appointed; or
 - b. The Court or its designee exercises discretionary authority to appoint one of the attorneys whose name is among the next five in order on the list; or

- c. The Court or its designee finds that the individual facts of the case or circumstances of the defendant are good cause and rise to the level of need to appoint any qualified, willing attorney; and
 - d. When an attorney is appointed out of order under the above stated provisions, that attorney's name will be moved to the last place and any lawyer who was not appointed will remain at the top of the list until appointed or removed from the list.
- 4. Each attorney appointed under these procedures shall represent the accused until final disposition of the case or until released by the Court.
 - 5. At the conclusion of all proceedings in the trial court, including post-trial motions, if an indigent defendant wishes to file an appeal the appointing judge or his or her designee shall appoint the lawyer whose name appears next in order on the Appellate List or appellate contract rotation. The appointment is subject to the same rotation provisions as those listed for trial attorneys.

B. Appointment of Counsel in Capital Cases

Immediately after the 15.17 hearing in a Capital Case, the Magistrate shall contact the District Judge in whose court the case is assigned for direction on appointing lead counsel from the list of attorneys approved by the local selection committee of the Administrative Judicial Region pursuant to the requirements of Article 26.052(e), Code of Criminal Procedure.

C. Appointment of Replacement Counsel

Whenever appointed counsel is removed for any reason, and the accused remains indigent, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

Fee and Expense Payment Process

A. Attorney Fee Schedule and Compensation of Appointed Attorneys

- 1. The fees set forth in the Felony Fee Schedule currently in effect and posted with TIDC will be paid to court appointed attorneys for time reasonably necessary for adequate representation of the accused in a District Court.
- 2. Other services not specifically set forth therein shall be compensated at the rate set forth in the respective fee schedule for time spent in or out of court objectively necessary for the adequate representation of the accused, as determined by the judge of the court in which the representation was provided.
- 3. Request for payment by court appointed attorneys shall be submitted within 6 months of the disposition of the matter. No payment shall be made for such services until counsel

has submitted to the court an adequate and detailed request for payment and the judge has approved the payment.

- a. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount.
 - b. An attorney whose request for payment is disapproved or is not acted upon within 60 days of submission may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region.
4. Requests for payment submitted outside of the timeframe above must be accompanied by statement explaining the reason for the delayed submission, and approval will be at the discretion of the judge based on good cause shown.
5. 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.
6. Court appointed counsel shall be reimbursed for reasonable and necessary expenses in the manner provided for by Articles 26.05 and 26.052 (f), (g), and (h) of the Code of Criminal Procedure.
7. Court appointed counsel are not allowed to solicit or accept remuneration from the client on the appointed case. If a client is charged with new offenses or is in need of other legal services during the pendency of his appointed case, the appointed attorney cannot accept remuneration for representation in those matters without prior approval by the Court.

B. Payment of Expenses

1. **Expenses not Approved for Reimbursement.** Administrative or secretarial work whether performed by a secretary, legal assistant, paralegal, investigator, or attorney shall not be approved for reimbursement. Such work includes but is not limited to preparing and submitting forms and invoices for payment, file set up, file maintenance, and file review.
2. **Expenses Approved for Reimbursement.** Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including for investigation and experts. Prior court approval should be obtained before expenses are incurred through filing of an *ex parte* motion. *See Ake v. Oklahoma*, 400 US 68 (1985). Expenses shall be paid according to the procedures set forth below.

3. Procedure with Prior Court Approval.

- a. Appointed Counsel may file with the trial court an *ex parte* request for advance approval of investigative and expert expenses. The request for expenses must state, as applicable:
 - i. The type of investigation to be conducted or the type of expert to be retained;
 - ii. 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,
 - iii. An itemized list of anticipated expenses for each investigation or each expert.
- b. Any request for funding of travel in relation to investigative and expert services must be approved in advance.
 - i. Such a request shall include an explanation of why travel is necessary and what alternatives were explored.
 - ii. A budget must include estimated mileage costs, number of days of travel (for purpose of per diem), estimate for cost of airfare (if applicable), estimated cost of hotel (if applicable).
 - iii. The most cost-effective approach is required (i.e., 1 day trip as opposed to an overnight stay, etc., rental vs. personal vehicle, airfare booked as far in advance as possible).
 - iv. Mileage will be reimbursed at the prevailing IRS reimbursement rate.
- c. 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:
 - i. State the reasons for the denial in writing;
 - ii. Attach the denial to the confidential request; and
 - iii. Submit the request and denial as a sealed exhibit to the record.

4. Procedure without Prior Court Approval

- a. Counsel appointed to represent accused persons in a District Court are authorized to incur investigative expenses of up to \$750 without prior approval of the Court, and which will be reimbursed with appropriate supporting documentation.
- b. Appointed counsel should not incur investigative or expert expenses beyond this amount without prior approval of the Court. In an emergency situation, counsel may find need to incur expenses without authorization in advance. Such situations should be rare, and, on presentation of a claim for reimbursement, the Court shall order reimbursement of counsel for such expenses if the expenses are found to be reasonably necessary and reasonably incurred.
- c. Unreasonable or unnecessary expenses will not be approved.

5. Supporting Documentation for Expenses

- c. When submitting a request for payment of expenses (including, but not limited to services provided by medical, psychological, forensic, or mitigation experts, or services provided by investigators), invoices supporting the request must be sufficiently detailed as to allow the Court to make a determination of the accuracy and appropriateness of the request.
 - i. For services (i.e., meetings/testimony/evidence review/phone calls, etc.), at a minimum the date the services were provided must be included with the amount of time being compensated for.
 - ii. For supplies purchased, a receipt for the supplies must be included.
 - iii. For travel, receipts for any costs incurred (i.e., hotel, etc.) and proof of mileage for requested reimbursement must be included.

Miscellaneous

Standards and Responsibilities for Attorney

Attorneys included on an Appointment List and who are appointed to a case shall:

1. Notify the Court within 72 hours of receipt of the appointment;
2. Make every reasonable effort to:
 - a. Contact the accused by the end of the third working day after the date on which the attorney is appointed; and

- b. Personally interview the accused as soon as practicable after the attorney is appointed, but **no later than 15 calendar days** if the accused is incarcerated in the Smith County Jail.
3. Represent the accused until:
 - a. The charges are dismissed;
 - b. The accused is acquitted;
 - c. Appeals are exhausted; or
 - d. The attorney is relieved of his or her duties by the Court, or replaced by other counsel, after a finding of good cause has been entered on the record.
4. Investigate, either personally or aided by 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 accused.
5. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the accused;
6. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
7. Be prepared to try the case to conclusion, either with or without a jury;
8. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
9. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case;
10. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client in making appropriate decisions about the case;
11. Perform the attorney's duty owed to the accused in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics; and,
12. Manage the attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

Removal and Reinstatement

A. Removal from Individual Cases

1. A judge may replace an appointed attorney if the appointed attorney does not make an effort to contact the accused by the end of the first working day, and/or does not interview the accused within 15 calendar days, and/or for any other suitable reason, as determined by the judge. An attorney against whom non-compliance is alleged may obtain from the court an exception for good cause.
2. 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:
 - a. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
 - b. Current information about the accused and the charges against the accused indicate that another qualified attorney is more appropriate for the accused under these rules;
 - c. Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
 - d. The appointed counsel shows good cause for being removed, such as illness, workload, or scheduling difficulties;
 - e. The accused requests an attorney, other than trial counsel, for appeal; or
 - f. The accused shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the accused.
3. An attorney may be removed from representation upon their own motion, including for reasons of conflict of interest or ethical concerns, and if the Court is satisfied that the lawyer has good cause for being relieved and that the client will not be prejudiced.
4. Upon the accused's request, the court may, upon finding of good cause which may include, but is not limited to, persistent or prolonged failure to communicate, replace appointed counsel.
5. Replacement counsel shall be selected and appointed immediately following removal of counsel as described below.

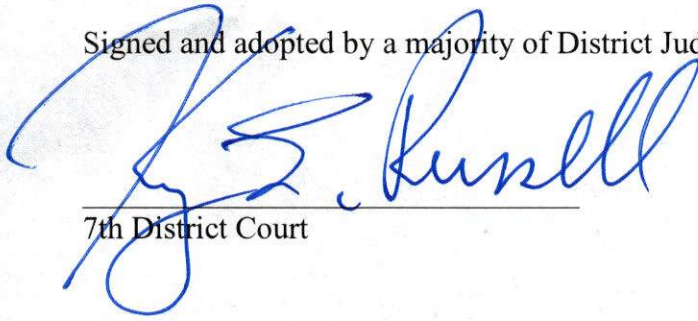
B. Removal from Appointment Lists

1. The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys appointed under these provisions.
2. An attorney may be removed from one or more appointment lists if a majority of the judges hearing felony matters determine that good cause exists for removal. Good cause may include, but is not limited to:
 - a. Intentionally or repeatedly failing to fulfill the duties required by law or local rules;
 - b. Failing to provide effective assistance of counsel as determined by a Texas Appellate Court;
 - c. Failing on two or more occasions to contact or interview clients in a timely manner as required herein;
 - d. Submitting a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;
 - e. Having been found to have violated a rule of professional conduct by the State Bar of Texas;
 - f. After having been placed on the appointment list, being convicted of or receiving deferred adjudication for any offense, other than an offense punishable by a fine only;
 - g. Being under indictment or charged with an offense, other than an offense punishable by a fine only; or
 - h. Failing to comply with the requirements for continued inclusion on the appointment lists.

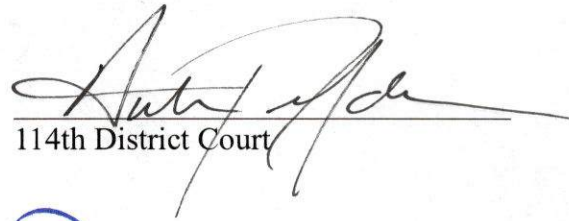
C. Reinstatement to Appointment Lists

1. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours, so long as the attorney meets the other qualifications under this plan.
2. An attorney who was removed from the appointment list for not submitting the attorney's annual TIDC Attorney Reporting Form may be immediately reinstated upon submission of the form, so long as the attorney meets the other qualifications under this plan.
3. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

Signed and adopted by a majority of District Judges on this the 17th day of April, 2026.



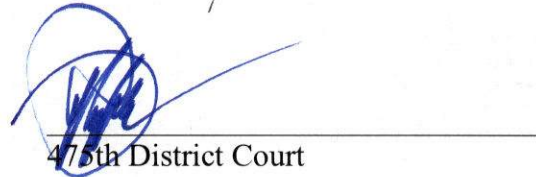
7th District Court



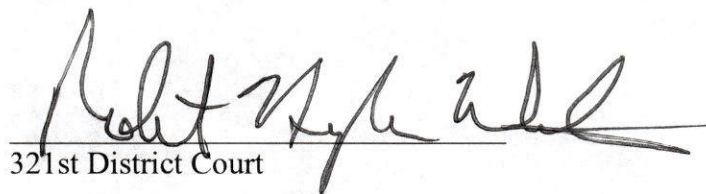
114th District Court



241st District Court



475th District Court



321st District Court