

Williamson District Court and County Court Plan

Preamble

This version of the Williamson District and County Court Plan (2016) has been adopted to assure compliance with the State Indigent Defense Act and related statutes.

Prompt Magistration

11/7/2015

MAGISTRATE PROCEDURES TO ENSURE TIMELY APPOINTMENT OF COUNSEL

1. Accused must be brought before the magistrate within 24 hours of arrest unless good cause dictates a reasonable delay, provided, however, such delay shall not exceed 48 hours from the time of the person's arrest. [Art. 14.06(a), CCP]
2. Person arrested for a misdemeanor without a warrant must be released on a surety bond in an amount no more than \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time or a PERSONAL BOND in the amount of \$5,000 [Art. 17.033, CCP], OR WITHOUT BAIL UPON ORDER BY THE MAGISTRATE WITH AN AFFIRMATIVE FINDING OF "NO PROBABLE CAUSE."
3. Magistrate must inform and explain right to counsel and right to appointed counsel to accused. [Art. 15.17(a), CCP]
4. Magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused. [Art. 15.17(a), CCP]
5. Record must be made of:
 - A. Magistrate informing the accused of the accused's right to request appointment of counsel [Art. 15.17(e)(1), CCP]
 - B. asking whether accused wants to request appointment of counsel [Art. 15.17(e)(2), CCP]; and
 - C. whether the person requested court appointed counsel. [Art. 15.17(e)(3), CCP]
6. If authorized to appoint counsel, magistrate must do so within 1 working day after receipt of request for counsel. [Art. 15.17(a), CCP]

7. If not authorized to appoint counsel, the magistrate, or any other person or entity designated by the county with authority to appoint counsel, must act upon the request by the end of the 1st working day following receipt of the request for appointment of counsel.

8. Arrests Out-of-County for Williamson County Offenses:

- A. Requests for a court appointed attorney received from another county for persons jailed in a county other than Williamson County for a Williamson County offense shall be treated consistent with the procedures set forth herein.
- B. This county shall ensure that a designated contact person or persons, together with necessary contact numbers (*facsimile, telephone, electronic mail, etc.*) be maintained at the Fair Defense Task Force Website.
- C. The designee receiving such request shall take steps necessary to see that such requests are processed consistent with these rules.

9. Arrests for Out-of-County Offenses:

- A. Requests for a court appointed attorney received from a defendant with charges pending in another county shall be treated consistent with the procedures set forth herein.
- B. This county shall deliver the request to the contact person or persons designated by that county on the Fair Defense Task Force Website if any such designation has been made by said county.
- C. The designee shall inform an attorney appointed to represent an arrested person on Williamson County charges who also has out-of-county charges that the arrested person is being detained in the Williamson County jail on the out-of-county charges in addition to any local charges.
- D. For any arrested person held in Williamson County solely on out-of-county charges, the Court or the Court's designee shall appoint counsel on any matter under Chapter 11 or 17 of the TCCP in the event counsel has not been appointed by the arresting county and the defendant has not been transferred or released into the custody of the arresting county.

MAGISTRATE PROCEDURES

- A. Presentment before a magistrate:
 1. All persons arrested with or without a warrant shall be taken before a magistrate within 24 hours of that person's arrest.
 2. All persons arrested in another county on a Williamson County charge for an offense of Class B misdemeanor or higher shall be presented before a magistrate within 24 hours of that person's arrival at the Williamson County Jail.
 3. Any request for a court appointed attorney, made by a person incarcerated in the Williamson County Jail for a Class B offense or higher, shall be brought to the attention of the magistrate within 24 hours of such request being made.
- B. At the time the arrested person is presented to the magistrate, the magistrate shall:
 1. Determine the legality of the person's arrest.
 2. Inform the person of the accusation(s) against him/her.
 3. In clear language, inform the person of an accused's:
 - a) Right to retain counsel;
 - b) Right to remain silent;
 - c) Right to have an attorney present during any interview with peace officers or attorneys representing the state;
 - d) Right to terminate the interview at any time;
 - e) Right to request the appointment of counsel if he is indigent and if the person cannot afford an attorney;
 - f) Right to an examining trial; and further,
 - g) If the defendant makes a statement, it can be used against him/her in court.
- C. At the time the arrested person is presented to the magistrate, the magistrate shall further:
 1. Inform the person that he/she has the right to request the appointment of a court appointed attorney if he/she cannot afford counsel;

2. Ask the person whether he/she wants to request appointment of counsel;
3. Make a record of the magistrate informing the arrested person of his/her right to a court appointed attorney;
4. Inform the arrested person of the procedures for requesting a court appointed attorney, and;
5. Make a record as to whether or not the person requested an attorney be appointed.

D. Court Appointed Attorney Requests

1. If the arrested person advises the magistrate that he/she intends to hire his/her own attorney, the magistrate shall:
 - a) Record this information on the magistration form;
 - b) Advise the arrested person of the procedures for making a request for a court appointed attorney at any time after the initial magistration should circumstances change and the arrested person subsequently determines that he/she will need a court appointed attorney.
2. If the arrested person advises the magistrate that he/she needs a court appointed attorney, the magistrate shall:
 - a) Record the request on the magistration form;
 - b) Request the arrested person sign under oath a written request substantially in the form as set forth in Exhibit A attached to these Procedures.
 - c) Make inquiry under oath into the arrested person's ability to pay for an attorney;
 - d) Obtain, under oath, such other information as may be necessary to a determination of the arrested person's ability to pay for an attorney;
 - e) Assist the arrested person in completing any paperwork necessary to request the appointment of an attorney;
 - f) Transmit, cause to be transmitted, in person or via facsimile, such request, together with any supporting documentation, to the Court

having jurisdiction of the offense for which the arrested person is charged, or to the Court's designee, if one is appointed, no later than 24 hours after the arrested person requests appointment of counsel;

- E. If an arrested person is charged with multiple offenses, the magistrate shall note this on the attorney request application form.
- F. If the arrested person is charged with both misdemeanor and felony offenses, the magistrate shall note this on the attorney request form.
- G. If the arrested person does not speak English or is deaf, the magistrate shall arrange to have an interpreter present to ensure that the magistrate informs the arrested person in a manner consistent with Articles 38.30 and 38.21, Texas Code of Criminal Procedure.
- H. Magistration forms containing substantially the same language as is exhibited in the "Forms" section of this submission shall satisfactorily fulfill the record keeping requirements of these rules.

Indigence Determination Standards

11/7/2015

Williamson County, Texas Standards of Indigence For Appointed Counsel In Adult Criminal Cases

1. Definitions – Terms used to determine eligibility for an indigent's defense services shall have the following meanings:

- A. **Indigent** – means a person who is not financially able to employ counsel.
- B. **Net Household income** - The defendant's household income shall be defined as the defendant's income and the income of all other persons related by birth, marriage or adoption who reside with the defendant. Income shall include the total cash receipts, before taxes, from all resources, including money wages and the net receipts from non-farm or farm self-employment. Further, income shall include regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, annuities, and income from dividends, interest, rents, royalties, or

- periodic receipts from estate funds, veteran's benefits, training stipends, military family allotments or regular support from an absent family member or governmental income program (AFDC, SSI, unemployment compensation, or state or county general assistance or home relief), 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 non-cash benefits (food stamps, etc.).
- C. **Liquid Assets** - Liquid assets shall include, but are not limited to, cash, savings, checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property, as well as any interest in retirement accounts.
 - D. **Household** – All individuals who are actually dependent on the accused for financial support.
 - E. **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.

2. Eligibility for Appointment

- A. A defendant desiring a court-appointed attorney shall complete a sworn questionnaire and provide documentation if ordered to do so. If a finding of indigency is made, the court shall appoint counsel.
- B. An indigent is any person with a household income at or below 125% of the latest poverty guidelines established and revised annually by the United States Department of Health and Human Services, and whose liquid assets do not exceed \$5000.00 for Felony cases, or \$2500.00 for Misdemeanor cases.
- C. A defendant whose household income exceeds 125% of the latest poverty guidelines may still qualify for a court appointed attorney if the court or its designee determines special circumstances exist, and may consider unusual, excessive, or extraordinary medical expenses, the age or physical infirmity of household members, or other expenses. 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 defendant has retained counsel in related legal matters (such as ALR or forfeitures), and any efforts the defendant has made to retain an attorney.

- D. The court or the court's designee may not consider whether a defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations herein.
- E. If the defendant has transferred property after the date of the alleged commission of the offense, the court shall determine the reason for the transfer of the property and shall determine 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 defendant 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 defendant or an adjustment is made by which the defendant receives full value, the defendant shall, if otherwise qualified, be eligible to receive legal representation at State expense.
- F. The guidelines established herein 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.
- G. A defendant may be required to reimburse the County in whole or in part for the cost of legal services provided as set forth in Article 26.05, Texas Code of Criminal Procedure. If a defendant is convicted or placed on deferred adjudication, the court may impose as a condition of probation the repayment of all or a part of the County's cost for providing representation, investigation and expert consultants or witnesses.

Minimum Attorney Qualifications

11/7/2015

Minimum Attorney Qualifications for Adults

1. The Judges hearing criminal cases shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:

A. 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 and a member in good standing of the State Bar of Texas;
3. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission/form prescribed by the Texas Indigent Defense Commission to the court administration office in the county.
4. An attorney shall complete a minimum of 10 hours of CLE in the area of criminal law and procedure each year, including one hour of ethics relating to the practice of criminal law. All attorneys on the appointment list must file a certificate with the court administration office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in 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 10 hours for such period may be applied to the

following period's requirement. The carryover provision applies to one year only;

5. An attorney must have a minimum 6 months experience in criminal law;
6. An attorney must have experience as lead counsel in at least two (2) criminal case(s) tried to verdict before a jury trial(s). The styles and cause numbers of these cases should be listed in the Statutory County Court's appointment application form;
7. 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 year(s);
8. An attorney must maintain an office capable of receiving e-mail and telephone calls. Further, the attorney must be capable of receiving either fax communications or e-mail with document attachments;
9. An attorney must have the ability to produce typed motions and orders;
10. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.

B. Felony General 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 and a member in good standing of the State Bar of Texas;
3. An attorney must be a resident of Williamson County OR maintain a physical office capable of receiving email and/or fax and telephone calls in Williamson County;
4. An attorney shall complete a minimum of 10 hours of CLE in the area of criminal law and procedure each year, including one hour of ethics relating to the practice of criminal law. All attorneys on the appointment list must file a certificate with the court administration office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in 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 10 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;

5. 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 year(s);
6. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission/form prescribed by the Texas Indigent Defense Commission to the court administration office in the county;
7. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.

C. State Jail Felony and Third Degree Felony Case Qualification Requirements (“B” List)

1. An attorney must meet general requirements for felony appointments;
2. An attorney must have a minimum of three (3) years' experience in criminal law;
3. An attorney must have prior experience as 1st or 2nd chair in at least four (4) criminal case(s) tried to verdict before a jury. At least two (2) of the trials must have been felonies. The styles and cause numbers of these cases must be listed in the District Courts appointment application form;

D. First and Second Degree Felony Case Qualification Requirements (“A” List)

1. An attorney must meet general requirements for felony appointments;
2. An attorney must have a minimum of five (5) years' experience in criminal law;

3. An attorney must have prior experience as 1st or 2nd chair in at least seven (7) criminal case(s) tried to verdict before a jury. At least three (3) of the trials must have been felonies. The styles and cause numbers of these cases must be listed in the District Courts appointment application form;

E. 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.

F. Appeal Qualification Requirements - An attorney must 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 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.

G. Exceptions to these 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 a majority of the District Court judges.

2. Approval for Appointment Lists

A. Misdemeanor List and Misdemeanor Mental Health List – An attorney must be approved by a majority of the Statutory County Court Judges hearing criminal cases.

B. State Jail Felony List, Second and Third Degree Felony List, First Degree Felony List, Capital Case List, Appeal List, and Felony Mental Health List - An attorney must be approved for each list by a majority of the District Court Judges hearing criminal cases.

3. 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.

4. Reinstatement to Appointment Lists

A. 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.

B. An attorney who was removed from the appointment list for not submitting the attorney's annual practice time report may be immediately reinstated upon submission of the report so long as the attorney otherwise meets the other qualifications under this Plan.

C. 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.

STANDARDS AND RESPONSIBILITIES FOR ATTORNEYS

- A. Notify the court within 72 hours of the receipt of appointment;
- B. Make every reasonable effort to:
 - 1. Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
 - 2. Personally interview the defendant as soon as practicable after the attorney is appointed but no later than 7 calendar days if the defendant is incarcerated in the Williamson County Jail for a misdemeanor offense or 14 calendar days for a felony offense.
- C. Represent the defendant until:
 - 1. Charges are dismissed;
 - 2. The defendant is acquitted;
 - 3. Appeals are exhausted; or
 - 4. 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.
- D. 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;
- E. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
- F. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
- G. Be prepared to try the case to conclusion either with or without a jury;
- H. 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;
- I. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and
- J. 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;

- K. 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; and,
- L. 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.

REMOVAL FROM COURT APPOINTED ATTORNEY LIST

1. A judge may replace an appointed attorney if the appointed attorney does not make an effort to contact the defendant by the end of the first working day, and/or does not interview the defendant within 14 days, and/or for any other suitable reason, as determined by the judge. An attorney may notify the judge and obtain an exception for good cause.
2. An attorney may be removed from the appointment list if a majority of the District judges hearing criminal 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 reasonable 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.

Voluntary Removal

- 1. An attorney at any time may request in writing, a period of temporary voluntary removal from the appointment list. Upon receipt of a written request, the attorney shall be returned to the appointment list provided the attorney remains qualified. If the period of voluntary removal exceeds one year, the attorney must reapply for felony appointments through the original application process.

Prompt Appointment of Counsel

1. Felony Public Appointment Procedures Timely Appointment by Court or Court Designee

- A. The Court, or the Court's designee, shall appoint counsel to indigent defendants on rotation from the public appointment list within twenty four hours, or as soon as possible, but not later than the end of the first working day after the date on which the Court, or the Court's designee, receives the defendant's request for appointment of counsel. "Working day" means Monday through Friday, except for official holidays.
- B. It is recognized that certain interruptions of this sequence may occur. The following provisions are intended to be used in the circumstances they describe:
- C. If a person requests court appointed counsel through the procedures set forth herein and is thereafter released on bond, the request shall be considered by the court or the court's designee no later than the first working day following the day the request is presented to the judge of the court.
- D. All persons who do not complete the request for a court appointed attorney during the 15.17 hearing shall be provided with information necessary to subsequently complete a request for court appointed counsel.
- E. If a person requests court appointed counsel at the 15.17 hearing but is released on bond before completing all documents necessary for the determination of indigency, that person can complete the request for an attorney pursuant to the instructions provided at the 15.17 hearing.

- F. If a person is released on bail without making a request for court appointed counsel at the 15.17 hearing and the defendant subsequently discovers an inability to afford counsel, that person may complete a request for a court appointed hearing pursuant to the instructions provided at the 15.17 hearing.
- G. Any request for court appointed counsel that is received by the magistrate, indigent defense coordinator or such other person designated by the courts to assist in the completion of such requests, shall be transmitted to the appropriate court, or person designated by the court to receive such requests, for determination of indigency. The court or the court's designee to whom the request is presented shall review the request and shall appoint counsel by the end of the first working day following the day the request was presented to the court. 15.17 refers to Article 15.17, Code of Criminal Procedure.
- H. If a defendant appears without counsel in any adversarial judicial proceeding that may result in punishment by confinement, the court must advise the unrepresented defendant of the right to counsel and procedures for obtaining counsel.

2. Misdemeanor Public Appointment Procedures
Timely Appointment by Court or Court Designee
Arrest for In-County Offenses:

- A. In all cases in which a person is charged with a misdemeanor offense and that individual has been confined in the Williamson County jail, the arrested person shall be taken before the jail magistrate no later than 24 hours after the person is arrested. The person shall be informed of the person's right to request appointment of counsel and the procedures for requesting such counsel as set forth in the Magistrate's Procedures for Williamson County.
- B. In all cases where an arrested person charged only with a misdemeanor offense has been brought before the jail magistrate and has requested court appointed counsel, the jail magistrate shall inquire into such person's indigent status according to the procedures set forth under the Magistrate's Procedures for Williamson County.
- C. The magistrate or its designee shall no later than 24 hours after the person arrested requests appointment of counsel, transmit or deliver the person's request for counsel to

the Judge of the court where the case is assigned. If that judge or a judge assigned as a visiting judge to that court is not available, the request may be presented to an assigned visiting Judge in the court, the request may be presented to any available misdemeanor court judge or, if no misdemeanor court Judge is available, to any available felony court Judge.

- D. The Judge to whom the request for court appointed counsel is presented shall review the request and shall either appoint counsel or notify the personal requesting the appointment of counsel that the request has been denied no later than 5:00 p.m. of the first business day following the day the request was presented to the Judge. The Judge may request written documentation from the person to verify the information set forth in the form completed by the defendant.
- E. If the Judge denied the request for court appointed counsel, the arrested person, if requested, shall be entitled to present additional evidence or argument in support of the request for appointment of counsel to the Judge of the court where the person's case is assigned at the person's first court appearance.
- F. If a person requests court appointed counsel through the procedures set forth herein and is thereafter released on bond, the request shall be considered by the court or the court's designee no later than the first working day following the day the request is presented to the judge of the court.
- G. All persons who do not complete the request for a court appointed attorney during the 15.17 hearing {15.17 refers to Article 15.17, Code of Criminal Procedure} shall be provided with information necessary to subsequently complete a request for court appointed counsel.
- H. If a person requests court appointed counsel at the 15.17 hearing but is released on bond before completing all documents necessary for the determination of indigency, that person can complete the request for an attorney pursuant to the instructions provided at the 15.17 hearing.
- I. If a person is released on bail without making a request for court appointed counsel at the 15.17 hearing and the defendant subsequently discovers an inability to afford counsel, that person may complete a request for a court appointed hearing pursuant to the instructions provided at the 15.17 hearing.

- J. Any request for court appointed counsel that is received by the magistrate, indigent defense coordinator or such other person designated by the courts to assist in the completion of such requests, shall be transmitted to the appropriate court, or person designated by the court to receive such requests, for determination of indigency. The court or the court's designee to whom the request is presented shall review the request and shall appoint counsel by the end of the first working day following the day the request was presented to the court.
- K. In the case of an arrested person who is charged with both a misdemeanor and a felony case, such person shall automatically be appointed legal counsel for the misdemeanor case if legal counsel is appointed on the felony case. The misdemeanor court Judge shall appoint the same attorney that the felony court Judge appointed from the felony appointment list unless the same legal counsel is not available to accept the appointment or for good cause shown. If the person has requested court appointed counsel in the felony case and such request has been denied, the person may still request appointed counsel for the misdemeanor case by submitting the written request as set forth in these procedures.
- L. If a person's request for court appointed counsel is denied, the court will enter an order denying appointment of counsel and cause the defendant to be notified. If the request is denied, the court in which the person's case is assigned shall provide the person reasonable time to retain private counsel in their case.
- M. A person may request court appointed counsel at the person's first court appearance if said defendant has not previously requested appointment of counsel at the proceeding before the magistrate pursuant to Article 15.17, as set forth in Tab A, waived the proceeding before the magistrate pursuant to Article 15.17 or if the previous request was denied by the court.
- N. In the Judge's discretion, the defendant may request court appointed counsel at any other time allowed by the trial court.

Attorney Selection Process

Felony Attorney Selection Process

1. Assignment of Attorneys. The following method shall be used to assign attorneys for all indigent defendants charged with felonies.
 - A. The Court, or the designee of the Court in which the charging instrument pends, will make appointments from the felony appointments list.
 - B. The appointing judge will:
 1. Receive all requests for appointment of counsel transmitted by the Magistrate pursuant to procedures as provided in “Magistrate Procedures—Timely Appointment of Counsel.”
 2. Determine whether the defendant requesting appointment of counsel is indigent.
 3. Select and appoint appropriate counsel as provided in these “Felony Public Appointment Procedures.”
 4. Notify all interested parties.
 5. Any appointing judge may delegate any of the responsibilities described in I.B. 1, 3 and 4 to the Court to the court administrator of said court.
 - C. The appointing judge or person delegated to make appointment will appoint the lawyer whose name appears next in order on the public appointments list that corresponds to the most serious offense as currently charged, unless:
 1. The defendant does not understand English, in which case the next available attorney on the list speaking the defendant’s primary language will be appointed.
 2. The appointing judge or person delegated to make appointment exercises discretionary authority to appoint one of the attorneys whose name is among the next five names in order on the list, or
 3. In unusual circumstances, the person making the appointment enters a written or oral finding of good cause on the record for appointing any qualified, willing attorney regardless of whether that attorney’s name is among the first five names on the appropriate list.
 4. When a lawyer is appointed out of order under I. C. 3. Above, the lawyer who is appointed out of order will move to the last place in order on that list,

and any lawyer who was not appointed will remain at the top of the list until appointed or removed from the list.

5. Each attorney that is appointed under this Procedure is to represent the defendant in the trial court until relieved by the Court.
 6. Appellate counsel: 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 person designated by the Court to appoint counsel will appoint the lawyer whose name appears next in order on the Appellate List subject to the same rotation provisions as those listed for trial attorneys.
- D. In the event the application for appointment of counsel is denied, the Court will enter an order denying same on the defendant's application form and cause the defendant to be notified of the denial of the application.
 - E. In the event the application for appointment of counsel is granted, the Court will enter an order granting same on the defendant's application for and cause the defendant and the attorney to be notified of the appointment. The attorney will be notified by telephone, facsimile, electronic mail, in person, or by other immediate means of communication.
 - F. In the event the Court or the Court's designee determines that the defendant is deaf or does not speak and understand the English language, an effort will be made to appoint an attorney capable of communicating with the defendant in a language understood by the defendant.
2. Removal of an Appointed Attorney
- A. An attorney may be relieved from an appointment upon satisfying the Court that the lawyer has good cause for being relieved and that the client will not be prejudiced.
 - B. The Court may, upon finding good cause on the record to replace Appointed counsel (including the provisions of Article 26.052(e) of the Code of Criminal Procedure in a death penalty case) and no prejudice to the defendant will result, replace appointed counsel.
 - C. Upon the defendant's request, the Court may, upon finding of good cause:
 - a. Replace appointed counsel other than trial defense counsel for appeal or post-conviction habeas corpus proceedings, or

- b. Replace appointed counsel for persistent or prolonged failure to communicate with the defendant.
3. Replacement counsel shall be selected and appointed immediately following removal of counsel as described in G. (1), (2), or (3) above.

Misdemeanor Attorney Selection Process

1. Assignment of Attorneys. The following method shall be used to assign attorneys for all indigent defendants charged with misdemeanors.
 - A. **Arrest for In-County Offenses.**
 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 the procedures set forth herein.
 2. The counsel appointment list for misdemeanors shall include all attorneys who have applied and been approved by the county court at law Judges and who meet the qualifications for appointment as may, from time to time, be adopted by the Judges.
 3. 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 appointment list 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 Williamson County holidays or closings.
 4. The court or its designee shall appoint the name of the attorney whose name appears next in order on the appointment list unless:
 - a. The defendant does not understand the English language, in which case the next available attorney on the list speaking the defendant's primary language will be appointed.
 - 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;
 - c. In unusual circumstances, the court or its designee finds good cause for appointing any qualified, willing attorney regardless of whether that attorney's name is among the first five names on the appointment list.

- 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 in order on the list.
5. Each attorney appointed under this procedure shall represent the defendant until final disposition of the case or until released by the Court. If the request for a court appointed counsel is granted, the Court will enter an order granting the request and provide notice to the defendant and attorney of the appointment. The attorney may be notified by telephone, facsimile, electronic mail, in person or by other immediate means of communication.
6. The misdemeanor courts or its designee may maintain a rotating list of attorneys eligible to receive cases from the appointment list to be used in appointing attorneys for individuals in jail at the court's arraignment docket or jail call. Appointments will be made on a rotating basis.

Fee and Expense Payment Process

Attorney Fee Schedule and Compensation of Appointed Attorneys

1. The fees set forth in the Felony Court Appointed Attorney Fee Notice dated October 29, 2007 (see "Forms") and misdemeanor "Attorney's Fees for Indigent Defense" dated October 26, 2007 (see "Forms") will be paid to court appointed attorneys for time reasonably necessary for adequate representation of the defendant.
 - A. **Other services** not specifically set forth therein shall be compensated at the rate of \$50.00 per hour for time spent in or out of court objectively necessary for the adequate representation of the defendant, as determined by the judge of the court in which the representation was provided.
 - B. **Request for payment** by court appointed attorneys will be submitted on a standard form itemizing the services performed. No payment shall be made for such services until the form itemizing services has been submitted to the judge, and the judge has approved the payment.
 - C. **Reasonable Rates** - Attorneys representing indigents 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.

2. **Payment of Expenses:**

- A. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.
- B. Procedure With Prior Court Approval:
 - 1. 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:
 - a. The type of investigation to be conducted or the type of expert to be retained;
 - b. 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,
 - c. An itemized list of anticipated expenses for each investigation and/or each expert.
 - 2. 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:
 - a. State the reasons for the denial in writing;
 - b. Attach the denial to the confidential request; and
 - c. Submit the request and denial as a sealed exhibit to the record.
- C. 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.