

**Montgomery County District Courts Plan**  
**LOCAL RULES FOR THE FAIR APPOINTMENT OF COUNSEL FOR**  
**INDIGENT DEFENDANTS IN FELONY CASES**

**PREAMBLE**

The District Judges of Montgomery County adopt these rules and these rules are applicable to all attorneys certified to handle felony criminal appointments. The Office of Court Administration (OCA) shall provide a copy of these rules and procedures to each attorney accepted on the court appointment list.

The Office of Court Administration shall manage the appointment system via the Fair Indigent Defense Online system adopted by the county. The Fair Indigent Defense Online (FIDO) will be the only method to determine indigence, appoint attorneys, submit, approve, and send vouchers for payment in criminal cases. The OCA Director will ensure that all indigent defendants in need of appointed counsel are assigned an attorney in a timely manner. The Director or Designee will monitor compliance with the requirements and regulations of the Court appointment system.

**APPOINTMENT DESIGNEE**

The Board of Judges (District and County Court at Law) shall appoint one or more Appointment Designees (AD) as the appointing authority for indigent defense. The AD will be under the supervision of the OCA. The Board of Judges shall determine the duties and responsibilities and compensation of the AD.

- A. The arresting officer, or the person having custody of the defendant, shall ensure that every defendant shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested for proceedings under Article 15.17 of the Texas Code of Criminal Procedure. Unless the defendant was arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, the magistrate must complete and file the necessary forms establishing probable cause at the time the defendant is booked into jail for any felony or misdemeanor punishable by incarceration.
- B. For defendants appearing before a magistrate in the Montgomery County Jail, the Office of Indigent Defense will ensure assistance in completing an Affidavit of Financial Condition for the arrestee prior to the magistrate court. If defendant requests court appointed attorney at the time of magistration, the Office of Indigent Defense certifies the accuracy of their Affidavit for the purpose of determining eligibility for court appointed counsel.

C. Magistration

1. At the Magistrate's hearing, the magistrate shall determine if the defendant can speak and understand English, or if the defendant is deaf. After making such determination, the magistrate shall ensure that the defendant receives the information with the assistance of an interpreter in a manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31.
2. A defense attorney assigned to the Magistration and Bail Review hearing will be present at the Magistration to assist the defendant through the hearing.
3. The appointment of counsel at the Article 15.17 hearing shall be for the limited scope of representation of the indigent arrested person during the magistration process and related solely to probable cause, the determination of bail, and bail conditions for arrested persons. The arrested person shall be appointed counsel for the remainder of the case according to the procedures set in this indigent defense plan. The limited scope appointment is concluded upon the termination of the Article 15.17 hearing, and no motion to withdraw is necessary
4. The Magistrate shall:
  - a. Advise the defendant of the accusation against him/her and any affidavit filed therewith.
  - b. Admonish the defendant of: the right to retain counsel; the right to remain silent; the right to have an attorney present during any interview with peace officers or attorneys representing the state; the right to terminate an interview at any time; the right not to make a statement and that any statement made by the accused may be used against him/her; and the right to an examining trial.
  - c. Inform the defendant of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel and inquire as to whether the defendant requests that counsel be appointed.
  - d. Provide defendants requesting appointed counsel with necessary forms for request of appointment of counsel and ensure that reasonable assistance is provided to the defendant for completion of the required forms at the time of the magistrate's hearing.
5. In cases where the defendant 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 defendant committed the offense.



6. The magistrate shall set the amount of bail and any conditions of bond for the defendant, if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.
7. If the defendant is not satisfied with the bail amount given by the magistrate, the defendant may request a bail re-hearing at the 15.17 hearing. This re-hearing will occur the next working day.
8. The magistrate shall record the following:
  - a. The date and time the defendant was arrested and the date and time when he/she was brought before the magistrate.
  - b. Whether the magistrate informed and explained to the accused the right to counsel.
  - c. Whether the magistrate informed the defendant of the right to request appointment of counsel and the magistrate asked the defendant whether he/she wants to request counsel.
  - d. Whether the defendant requested appointment of counsel
9. If the magistrate is not authorized to appoint counsel and if the defendant requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to the OCA (the appointing authority). The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the defendant requests appointment of counsel.
10. If the magistrate is authorized to appoint counsel, the magistrate shall make a determination of indigence and shall appoint counsel within one working day after receipt of request for counsel consistent with Article 15.17 of the Texas Code of Criminal Procedure.
11. For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the Office of Indigent Defense will provide the arrestee with the appropriate forms for requesting counsel. The Office of Indigent Defense will ensure assistance in completing the forms at the same time. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made.

## **Magistration and Bail Review List**

### Notice of Magistration and Bail Review List

1. The Office of Indigent Defense will email notice of the opportunity, procedure and requirements to apply to be on the Magistration and Bail Review list to the Criminal Defense Bar, Montgomery County Bar and all current attorneys accepting criminal appointments. The notification shall inform attorneys of all the requirements for submitting the resume.
2. Attorney Requests for Magistration and Bail Review List. Attorneys must complete and submit a resume to the Office of Indigent Defense. Resume should include the following:
  - a. Name and bar card number
  - b. Telephone, facsimile and e-mail
  - c. Work Experience
  - d. Education
  - e. Trial Experience
  - f. Picture

### **Attorney Qualifications for Magistration and Bail Review List**

1. Approved by the majority of the Judges
2. Trial Experience
3. Special Language Qualification
4. Demonstrate proficiency representing defendants

### **Indigence Determination Standards**

#### A. Definitions

1. "Net household income," means all income of the defendant and spousal income actually available to the defendant. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); overtime, severance pay, unemployment benefits, disability or workman's compensation benefits; net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income



maintenance program, alimony, child support, public or private pensions, retirement benefits, or annuities; and income from dividends, interest, rents, royalties, capital gains, periodic receipts from estates or trusts, regular payments from Social Security, veteran's benefits, food, rent or household expenses received in lieu of wages or as a result of any agreement to share household expenses, tax refunds or compensation for injury. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the defendant has no income or lesser income.

2. "Non-exempt assets and property," means cash in hand, stocks and bonds, accounts at financial institutions, and equity in real or personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.
3. "Household." means all individuals who are actually dependent on the defendant for financial support.

B. A defendant is considered indigent if:

1. Income Standards:
  - a. The defendant's net household income does not exceed 125% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and
  - b. the value of the non-exempt assets and property owned by the defendant does not exceed \$2,500.00;
2. Current Residence: A defendant is considered indigent if the defendant is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental facility is sought, and has no access to property or assets in excess of the amounts specified above.
3. Inability to Retain Counsel: A defendant who does not meet any of the financial standards above may nevertheless be determined indigent if the defendant is otherwise unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents, taking into account the following:
  - a. nature of the criminal charge(s),
  - b. the anticipated complexity of the defense,
  - c. the estimated cost of obtaining competent private legal representation for the matter charged,
  - d. the amount needed for the support of the defendant and the defendant's dependents,

- e. the defendant's income, source of income, assets and property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and
  - f. spousal income that is available to the accused.
- C. Indigence Statement: Defendants who are determined to be indigent and request a court appointed attorney shall sign the Indigence Form containing a statement, swearing that they are unable to hire their own attorney.
- D. Duration of Indigency: An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused person's financial circumstances occur.
- E. Factors NOT to be considered in determining indigence:
  - 1. The accused person's posting of bail or ability to post bail.
  - 2. The resources available to friends or relatives of the accused.
- F. Partial Indigency: If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.
- G. No Request for Attorney: If a defendant does not request an appointed attorney, the defendant will both sign and date the Probable Cause, Rights, Bail And Attorney Request Form, attached hereto as Exhibit "C".

#### **Minimum Attorney Qualifications for Appeal Cases**

- A. The District Court Judges shall establish attorney Appointment Lists for Appeal cases. Attorneys who desire to represent indigent persons shall file with the Board of Judges (1) a sworn **Application To Be Placed On Public Appointment List For Montgomery County**, attached hereto as Exhibit "A", (2) an **Attorney Certification of Knowledge Of Local Rules For The Timely and Fair Appointment of Counsel for Indigent Defendants**, attached hereto as Exhibit "B" and (3) a sworn **Affidavit for Completed Training on Fair Indigent Defense Online System**, attached hereto as Exhibit "O". Attorneys must meet the following minimum requirements in order to be placed on the Public Appointment List:
  - 1. Ensure all information on their application is correct;
  - 2. Must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;



3. Complete a minimum of six (6) hours of CLE in the area of criminal law and procedure each year. The attorney 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 within 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 six (6) hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;
4. The 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 Three (3) years;
5. Maintain their principal law office in Montgomery County, Texas. The attorney must disclose the geographic location by city or town and physical address of their principal office. The attorney shall have only one principal office;
6. The ability to produce typed motions and orders, and the attorney's office shall be capable of receiving email, fax, and telephone calls; and
7. Notify the OCA office promptly, in writing, of any change of address or contact information and of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.
8. An attorney shall submit by October 15<sup>th</sup> each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in Montgomery County for adult criminal 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.
9. All attorneys shall reapply biennially for approval to the Public Appointment List(s) and must be approved by a majority of the District Court Judges handling criminal cases. The application renewal date is July 01, 2015, and on the same day of every other year thereafter.

B. Appeal Qualification Requirements

- a. An attorney must meet at least one of the following criteria:
  - i. Currently board certified in Criminal Law or Appellate Law by the Texas Board of Legal Specialization; or
  - ii. Personally authored and filed at least three criminal or civil appellate briefs or post-conviction writs of habeas corpus; or

- iii. Worked as a briefing clerk of an appellate court for a period of at least one year.
  - b. The applicant attorney must also submit a writing sample to be reviewed by the Judges.
- C. Capital Case Qualification Requirements:
  - a. 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.
  - b. 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.
  - c. 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.
- D. Special Language Qualifications and Appointments - Each attorney who speaks more than one language or who signs, may voluntarily note this fact when requesting appointment to any Public Appointment List. The magistrate or AD shall appoint an attorney that is capable of communicating in a language understood by the Defendant.
- E. Removal from Appointment List - An attorney may be removed from all Public Appointment Lists by a majority of the District Court Judges handling criminal cases.
- F. Judicial Removal from Case:

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

- Counsel's failure to appear at a court hearing;
- Counsel's failure to comply with the requirements imposed upon counsel by this plan;
- Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;



- Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
- The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
- The defendant requests an attorney, other than trial counsel, for appeal; or
- The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

Whenever appointed counsel is removed or placed on hold under this section, the Court may immediately appoint counsel in accordance with the procedures described in this plan.

- G. An attorney who was removed or placed on hold 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.
- H. A qualified attorney may at any time request, in writing, a period of temporary voluntary removal from the felony appointment wheels. At the end of any period of less than one year, upon written request, the attorney will be returned to the felony appointment wheel if he or she otherwise remains qualified. If the period of voluntary removal exceeds one year, the attorney must reapply for felony appointments through the original application process.
- I. Duties of Appointed Counsel - Appointed Counsel shall:
  1. Make every reasonable effort to contact the defendant by the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed.
  2. Represent a defendant until the charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the Court or replaced by other counsel after a finding of good cause is entered on the record.
  3. Perform the attorney's duty owed to the defendant in accordance with these procedures, the State Bar of Texas Performance Guidelines of Non-Capital Criminal Defense Representation, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
  4. 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.

## **APPOINTMENT BY LITIGATION PHASES**

- A. In the Court of Appeals
  - 1. If requested by the defendant-appellant, counsel shall be appointed by the trial judge for a direct appeal to the Court of Appeals no later than the next working day after sentencing.
  - 2. Unless the defendant specifically requests the appointment of trial counsel on appeal, the Court shall appoint an attorney other than the trial defense counsel on appeal.
  - 3. Appellate counsel shall be appointed from the Public Appointment Lists using the rotation procedure set out above.
  
- B. In the Court of Criminal Appeals

If appellate counsel is requested on direct appeal, that appointment shall be effective through and including the filing of a Petition For Discretionary Review or Response to a Petition For Discretionary Review and subsequent proceedings through a final decision by the Court of Criminal Appeals.
  
- C. In the United States Supreme Court
  - 1. In a death penalty case, the appointment shall be effective through and including the filing of a Petition for Writ of Certiorari.
  - 2. In non-death penalty cases, upon application from appellate counsel, the trial court has discretion to appoint counsel to file a Petition for Writ of Certiorari.
  
- D. Writs of Habeas Corpus
  - 1. The procedures outlined above for appointment of appellate counsel shall apply to writs of habeas corpus.
  - 2. The Court shall appoint a lawyer, other than the lawyer(s) that represented the Defendant at trial or on appeal, to represent the applicant in a writ of habeas corpus.
  - 3. An appointment in a writ of habeas corpus shall be effective through and including a decision by the Court of Criminal Appeals.

## **Prompt Appointment of Counsel**

- A. Opportunity to Request Court Appointed Counsel: At the Magistrate's Probable Cause hearing (which shall be within 48 hours of arrest), and at any time thereafter while charges are pending against the defendant, each defendant shall be provided the opportunity to request court appointed counsel, if indigent. When a Defendant requests appointed counsel, the magistrate or Judge may assist, or refer the defendant to the AD for assistance, in completing the **Attorney Request Form** and the **Application for Court Appointed**



**Attorney**, attached hereto as Exhibit “D”. The magistrate, Judge or AD may question the defendant under oath regarding the defendant’s financial resources in lieu of, or in addition to the **Application for Court Appointed Attorney**.

- B. *Deadline to Appoint Counsel:* Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the first working day after the date on which the appointing authority receives the indigent defendant’s request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.
- C. *Deadline to Appoint Counsel for Incarcerated Defendants:* Where the defendant is incarcerated, the magistrate shall, no later than 24 hours after the defendant requests appointment of counsel, transmit or cause to be transmitted to the Office of Court Administration or Judge the forms requesting the appointment of counsel. Upon a determination of indigence, and no later than the end of the first working day after the date on which the OCA or the Judge receive the defendant’s request for appointed counsel, the magistrate, Judge or AD shall appoint an attorney from the appropriate Public Appointment List using a system of rotation. The magistrate, Judge or the AD shall appoint the attorney from among the next five names on the Public Appointment List in the order in which the attorney’s name appears on the List, unless the magistrate, Judge or AD Court makes a finding of good cause for appointing an attorney out of order.
- D. *Defendant Released from Custody Prior to Appointment of Counsel:* If the indigent defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant’s first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
- E. *Defendants Appearing Without Counsel:* Defendants Appearing without Counsel shall be advised of the right to counsel and the procedures to request court appointed counsel. If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:
  - 1. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.
  - 2. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state

unless the appointing authority has denied the request and, subsequent to the denial, the defendant:

- a. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
  - b. Waived or has waived the opportunity to retain private counsel.
3. The attorney representing the state may not initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel or communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant has been given a reasonable opportunity to retain counsel or waives or has waived the opportunity to retain private counsel.
- F. If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within 1 working day of the county's receipt of the request for counsel.
- G. If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in the county's custody.
- H. Appointment of One Attorney: Where the defendant has felony and misdemeanor charges, the magistrate, Judge or the AD shall appoint one attorney for all charges from the List for the most serious offense. In the event a Defendant requests an attorney who is not qualified for the category of offense with which the Defendant is charged, the Defendant must sign and file Defendant's Motion to Appoint Attorney on Higher Category Case. The magistrate or Judge shall sign an Order Appointing/ Denying Attorney.
- I. Notification of Appointment to Attorney: The magistrate, Judge or the AD shall notify the attorney of the appointment by the most expeditious means available and provide counsel with a copy of the Order Appointing Counsel and the last known location of the Defendant. If the attorney does not accept the appointment, the attorney shall immediately advise the magistrate, Judge or the AD and the above rotation process shall be repeated.

### **Contract Defender Program**

#### **A. General Provisions**

1. The judge of each court trying criminal cases shall post in writing in the Office of Court Administration and with District Clerk's office, the method used by the court to appoint counsel to represent indigent defendants. A court may use any of the alternative methods, described below to make appointments



2. An attorney assigned to a case under any method shall zealously represent a defendant until the defendant is acquitted, appeals are exhausted, or the court, after entering a finding of good cause on the record, relieves the attorney and/or replaces the attorney with other counsel.
- B. Method of Appointment
1. “Contract Defender Program” means a private attorney acting as an independent contractor and compensated with public funds who is assigned to provide legal representation and services to indigent defendants for a specific period of time lasting more than a week but no more than fifteen months.
- C. Notice of Contract Defender Program
1. The Office of Indigent Defense will email notice of the opportunity, procedure and requirements to apply to be a contract defender to the Criminal Defense Bar, Montgomery County Bar and all current attorneys accepting criminal appointments. The notification shall inform attorneys of all the requirements for submitting the resume.
- D. Attorney Requests for Contract Defender Appointments. Attorneys must complete and submit a resume to the Office of Indigent Defense. Resume should include the following:
- a. Name and bar card number
  - b. Telephone, facsimile and e-mail
  - c. Work Experience
  - d. Education
  - e. Trial Experience
  - f. Picture

#### **Procedure for Contract Defender Program**

Consideration of the selection must be based upon at least the following factors:

- a. Experience and qualifications of the individual or submitting resume for a contract assignment;
- b. past performance of the individual submitting resume for a contract assignment in representing indigent defendants in District Court;
- c. disciplinary history with the State Bar of the individual submitting the resume for a contract assignment;

- d. ability of the individual submitting the resume to comply with the term of the contract.

Upon execution of the contract assignment by the individual selected and the Commissioner's Court, the District Courts will exclusively appoint the contract attorney, subject to the limitations described in these rules.

#### **Attorney Qualifications for Contract Defender Program**

1. Approved by the majority of the Judges
2. Trial Experience
3. Special Language Qualification
4. Demonstrate proficiency representing defendants

#### **Attorney Selection Process**

- A. The appointing authority will appoint an attorney whose name is among the list of the contract defender program assigned in that specific District Court, unless the appointing authority makes a finding of good cause for appointing an attorney out of order. Good cause may include:
  1. The defendant requesting counsel does not understand English, in which case the judge will appoint a Special Language attorney whose name is among the list of the contract defender program assigned in that specific District Court.
  2. The defendant has an attorney already appointed on a prior pending matter. The same attorney will be appointed to the new matter.
- B. Once appointed, the attorney's name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.
- C. If the appointing authority is a Court which has adopted a contract defender program, the appropriate appointment list shall be constituted by those attorneys who are contract defenders in that court.
- D. When an attorney is appointed to a case where he/she is not assigned to the respective court, the attorney may withdraw from the case. The case where the attorney is withdrawing shall not count towards his/her 119 defendants. A new attorney from the appropriate appointment list shall be appointed.



E. Duties of Appointed Counsel - Appointed Counsel shall:

1. Make every reasonable effort to contact the defendant by the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed.
2. Represent a defendant until the charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the Court or replaced by other counsel after a finding of good cause is entered on the record.
3. Perform the attorney's duty owed to the defendant in accordance with these procedures, the State Bar of Texas Performance Guidelines of Non-Capital Criminal Defense Representation, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
4. 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.

F. Restrictions

1. Attorneys may not accept overlapping contract appointments.
2. The OCA Director shall present monthly reports on overall attorney caseload to the judges trying criminal cases as a measure to keep attorney appointments within the guidelines established by the Texas Indigent Defense Commission.

**Appointment of Second Chair Counsel**

- A. The Court may appoint Second Chair Counsel as needed from the Contract Defender Program.

**Fee and Expense Payment Process**  
**Compensation of Counsel**

**Contract Defender Amount**

Appointed Counsel shall be paid as follows:

- |    |  |                           |
|----|--|---------------------------|
| a. | Attorney Fee Expense   | \$2692.31 (every 2 weeks) |
| b. | Spanish Language Attorney Expense  | \$2884.62 (every 2 weeks) |
| c. | Continuous Sexual Abuse of a Child Trial Fee per Day   | \$750                     |
| d. | Aggravated Sexual Assault of a Child under the age of 6 Trial Fee per Day (Effective May 30, 2018) | \$750                     |
| e. | Attorney will be appointed up to 119 defendants per term   |                           |

### **Flat Fee Schedule for Capital Cases**

Unless paid in accordance with the Hourly Fee Schedule described below, appointed counsel shall be paid a Flat Fee Rate as follows:

- |    |                        |          |
|----|------------------------|----------|
| a. | Capital (First Chair)  | \$35,000 |
| b. | Capital (Second Chair) | \$30,000 |

### **Hourly Rate for Capital and Appeal Cases**

In the event that payment pursuant to the Flat Fee Schedule will not fairly compensate Appointed Counsel, due to unusual legal or factual complexities involved in the representation of Appointed Counsel's client, then in said event, Appointed Counsel shall be compensated in accordance with the following Hourly Rate Fee Schedule:

- |    |                        |            |
|----|------------------------|------------|
| a. | Capital (First Chair)  | \$150/hour |
| b. | Capital (Second Chair) | \$100/hour |
| c. | Appeals                | \$90/hour  |

Hourly rates on Capital and Appeal cases shall be paid for performing the appropriate statutory service according to the criteria defined in TEX CODE CRIM PROC. ART. 26.05(a).

- B. Request for payment on Capital and Appeal Cases: Fee voucher should be submitted to the court via the Fair Indigent Defense Online System.
- C. Payment requests on Capital and Appeal cases must be submitted to the Judge presiding over the proceedings. The Judge shall either approve or disapprove the amount requested or shall enter written findings stating the amount approved and the reason(s) for approving an amount different from the requested amount.
- D. Appeal of disapproved fee payment requests will be made by appointed counsel to the Presiding Judge of the Second Administrative Judicial Region, as provided by the Fair Defense Act.
- E. **Investigators and Expert Expenses With Prior Court Approval**

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

1. the type of investigation to be conducted or the type of expert to be retained;



2. specific facts that suggest the investigation will result in admissible evidence or is reasonably necessary to assist in the preparation of a potential defense; and
  3. an estimate of the cost of said investigation/expert.
- F. Expenses Incurred Without Prior Approval: Expenses incurred without prior approval of the court will not automatically be reimbursed. On presentation of a claim for reimbursement, the court shall order reimbursement of the expenses upon determination that they are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.
- G. All payment of Court Appointed Attorneys for work performed in Capital cases shall be ordered via Ex Parte order. The attorney so appointed shall not be required to submit time detail as a condition of payment.

#### **Magistration and Bail Review Block Fee**

Counsel for Magistration and Bail Review shall be paid a Flat Fee Rate for the assigned block as follows:

- |    |                 |         |
|----|-----------------|---------|
| a. | Saturday-Monday | \$1,000 |
| b. | Tuesday-Friday  | \$1,000 |

#### **RETENTION OF RULES**

These Rules shall be filed and maintained in the Office of Court Administration, the office of the Administrative District Judge, the office of the Administrative County Court at Law Judge, and the offices of the District and County Clerk.

#### **ADOPTION**

Adopted the 26th day of November, of the year 2001.  
Amended the 4th day of October, of the year 2002.  
Amended the 15th day of November, of the year 2002.  
Amended the 31st day of October, of the year 2003.  
Amended the 27th day of August, of the year 2004.  
Amended the 14th day of October, of the year 2004.  
Amended the 19th day of November, of the year 2004.  
Adopted the 7th day of October of the year 2005.  
Adopted the 9th day of February of the year 2007.  
Adopted the 11th day of May of the year 2007.  
Amended the 27th day of August, 2011 and effective September 01, 2011.  
Amended the 3<sup>rd</sup> day of October, 2011 and effective October 7, 2011.

Amended the 4<sup>th</sup> day of October, 2013, effective October 4, 2013.  
Amended the 21<sup>st</sup> day of May, 2014, effective May 21, 2014.  
Amended the 5<sup>th</sup> day of June, 2015, effective June 5, 2015.  
Amended the 2<sup>nd</sup> day of October, 2015, effective October 02, 2015.  
Amended the 5<sup>th</sup> day of May, 2017, effective May 5<sup>th</sup>, 2017.  
Amended the 18<sup>th</sup> day of April, 2018, effective April 18<sup>th</sup>, 2018.  
Amended the 16<sup>th</sup> day of May, 2018, effective July 01, 2018.  
Amended the 23<sup>rd</sup> day of April, 2020, effective July 01, 2020.  
Amended the 02<sup>nd</sup> day of October, 2020, effective October 02, 2020.

/s/   
Judge Phil Grant  
9<sup>th</sup> District Court

/s/   
Judge Lisa Michalk  
221<sup>st</sup> District Court

/s/   
Judge Kathleen Hamilton  
359<sup>th</sup> District Court

/s/   
Judge Patty Maginnis  
435<sup>th</sup> District Court