

**Lampasas District Court and County Court Plan**

**Preamble**

*11/01/2017*

**Lampasas County  
District and County Courts  
Indigent Defense Plan**

Document Titled

Indigent Defense Plan

Document Effective Date

November 1, 2017

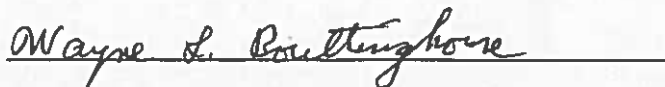
Authorities Required:

Local Administrative District Judge



John Gauntt, 27<sup>th</sup> Judicial District

County Judge



Wayne L. Boultinghouse, County Judge

## 1. Introduction

The following policy establishes practices for the appointment of attorneys for indigent defendants pursuant to the Texas Fair Defense Act. It will cover the subsequent processes required to qualify a defendant, verify documentation, sustain appropriate listing of approved legal counsel, appoint counsel, and process financial reimbursements. These policies are intended to provide guidance to Lampasas County District and County Courts to meet compliance with the following:

- Texas Fair Defense Act (FDA, Act 2001, 77th Legislature)
- Government Code
- Code of Criminal Procedure

Lampasas County recognizes that documented course of actions may contribute to accurate and timely processing. These guidelines are intended to provide effective processes for the Indigent Defense Coordinator and other offices and staff and provide a clear understanding of their respective roles in the process. The policy also provides an audit trail and assurance of the appropriateness and accuracy of reported financial data.

## 2. Document Conventions

This document utilizes the following conventions when referring to a specific text. All references to the Texas Government Code shall bear the reference "GC §". All references to the Texas Code of Criminal Procedure shall be referred to as "CCP §". All internal references to the herein plan/policy shall be referenced as "P §". All other references or citations shall use the proper full styling for correct citations.

All references to persons in this policy shall mean to include both genders, and their use shall be considered synonymous with the terms he or she and him or her.

All references to the term policy or plan shall be synonymous for the purposes of this document.

## 2.1 Definitions

The District or County Judge is responsible for managing the process of indigency determination, the Attorney Court Appointed List, and compliance.

Financial Questionnaire (FQ) – Affidavit of Indigency used to gather information for determining indigency.

Equity Assets- fair market value of marketable assets less indebtedness thereon.

## 3. Administration

These guidelines are designed to provide for a systematic method of providing qualified counsel to indigent persons in criminal cases.

This policy is also intended to provide procedures and guidance for the day-to-day responsibilities of the Lampasas County Indigent Defense Plan.

### 3. Office Location

The Lampasas County Indigent Defense Office is located in the Lampasas County District and County Court and the District and County Court Clerk's Offices. Transitory offices are located in the County Jail within the Magistration Courtroom inside the Lampasas County Jail.

#### 3.1 Mailing Address

Indigent Defense

PO Box 366

Belton, Texas 76513

#### 3.1.1 Physical Address – Lampasas County

Indigent Defense

409 South Pecan Street`

Lampasas, Texas76550

#### 3.1.2 Telecommunication

Telephone 512-556-8271

Fax 512-556-9463

### 3.2 Approval Process for Indigent Defense Policy

Indigent Defense Policy shall be approved by the Local Administrative District Judge, and the Constitutional County Judge. Each official shall sign the document and submit the Plan to the Commissioner's Court for publication of the County's web site.

### 3.3 Approval Process for Indigent Defense Plan

The Indigent Defense Plan shall be approved by the Statutory County Judges and the District Judge trying criminal cases. The Local Administrative District Judge, and the Constitutional County Judge shall sign the plan and submit for filing the approved plan for acceptance by the Commissioner's Court and shall be responsible for filing the appropriate documents with the Task Force on Indigent Defense.

## **Prompt Magistration**

*11/01/2017*

### 4. Magistration

A Magistrate's Courtroom is located in the Lampasas County Jail located at 410 East 4<sup>th</sup> Street, Lampasas, Texas. A magistrate shall attend the jail daily to ensure that defendants are presented before a Magistrate within 24 hours of their arrest.

The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. The magistrate

shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time.

A person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$ 5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

A person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person arrested without a warrant and detained pending the magistrate's determination of probable cause, for not more than 72 hours after the person's arrest.

#### 5. Request for Appointment of Counsel

In the event that a defendant requests appointment of counsel at magistration, the magistrate shall provide a Financial Questionnaire to that defendant and shall provide assistance and guidance to a defendant in accurately completing the form(s). In the event a defendant elects not to request appointment of counsel, a notation indicating such shall be made on the form at magistration and signed by the defendant.

Defendants appearing in Court without Counsel shall be advised of their right to Counsel and the procedures for requesting Court Appointed Counsel.

If a defendant wishes to request counsel prior to initial appearance, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website at <http://tidc.tamu.edu/public.net/> or from the IDC office. The defendant may submit these forms to the Court. The Court, or its designee, shall rule on all requests for counsel submitted in this manner.

## 5.1 Prior to Magistration

The Financial Questionnaire form shall be provided to the defendant at Magistration. The Court shall review the form and determine whether the defendant is indigent.

In the event that a defendant is arrested on an out-of-county warrant, the Magistrate shall inquire as to whether or not the defendant wishes to request counsel and record that response. In the event that counsel is requested, the Magistrate shall inform the person of the procedures for requesting counsel, provide the defendant with the appropriate forms and ensure the person is provided reasonable assistance in completing the necessary forms for requesting counsel. The magistrate shall then transmit the request for counsel to the appropriate authority of the county issuing the warrant as designated by that county within 24 hours of the request. Defendants arrested in other counties on local warrants must be appointed counsel in the county that issued the warrant within one working day of receipt of the request. Defendants arrested on out-of-county warrants must be appointed counsel in the county of arrest if the defendant has not been transferred or released to the custody of the county issuing the warrant before the 11<sup>th</sup> day after the date of the arrest.

## 5.2 Counsel

The Court shall make a determination of indigency within one working day of its receipt of a completed Financial Questionnaire. In the event that said 24 hour period terminates on a weekend or holiday, The Court shall make a determination of indigency within one working day immediately following their receipt of the completed Financial Questionnaire.

In the event that a defendant has been incarcerated for fourteen (14) days without counsel, the Court shall immediately advise the defendant that an attorney shall be appointed to represent the defendant. Said appointment shall be made by the close of business on the next business day following the defendant's contact by the Court.

If an indigent defendant is arrested in another county based on a Lampasas County warrant, a request for counsel shall be acted upon within one working day of this county's receipt of the request for counsel.

## **Indigence Determination Standards**

*11/01/2017*

### **6. Indigence Determination**

The financial standards set forth below shall be used by the Court to determine whether a defendant is indigent and shall be applied equally to each defendant in the County. The office shall not consider the following factors when determining eligibility:

- Posting bail or the ability to post bail
- Financial resources available to relatives or friends
- 

#### **6.1 Presumption of Indigency**

A defendant shall be presumed to be indigent if at the time of completion of the Financial Questionnaire the defendant is eligible to receive:

- Food Stamps
- Medicaid
- Temporary Assistance for Needy Families
- Supplemental Security Income
- Public Housing

A defendant shall be presumed to be indigent if the defendant is:

- currently serving a sentence in a correctional institution of 60 days or more,
- is residing in a public mental health facility, or
- is the subject of a proceeding in which admission or commitment to such a mental health facility is sought, or
- is currently receiving services from a the Court-appointed attorney on another pending offense.

#### **6.2 Special Circumstances**

In certain circumstances a defendant may exceed the financial criteria of the poverty level and asset test, but may still be found indigent. In these instances the Court may grant judicial approval for appointment of counsel.

These may include, but are not limited to, the following circumstances:

- Persons in the household over the age of 60 or are disabled
- Unable to obtain private counsel without substantial hardship to the family
- Complexity and the nature of the criminal charge
- Large medical bills or expenses

In the interest of justice, an attorney may be appointed to represent the following defendants:

(1) Defendants charged with a misdemeanor offense when currently on probation for a felony offense, or

(2) Defendants identified by PTS as facing or potentially facing immigration issues as a result of a plea/conviction on a criminal case, or

(3) Defendants under the age of 21 years charged with a misdemeanor theft offense, or

(4) Defendants unable to speak or understand the English language.

### 6.3 Finding of Indigency

The Court shall find the defendant indigent if:

#### Poverty Level

The defendant's gross household income less taxes paid by a single person claiming one exemption, does not exceed 125% of the Poverty guidelines established annually by the United States Department of Health and Human Services.

In determining the defendant's gross household income, the 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 assault on a child that is a member of the defendant's household or assault on any adult who is a member of the defendant's household.



## Asset Test

The defendant owns not more than \$5,000 in Equity Assets. Equity Assets are defined as the fair market value of marketable assets less indebtedness thereon.

## Presumptive Indigency

The defendant is presumed indigent pursuant to P § 6.1 herein or, because of special circumstances as per P § 6.2 herein.

## 6.4 Verification of Information

A determination of indigence is based upon the information provided by the defendant. The Court should be diligent in the interview process to ensure that the information provided by the defendant seems probable and accurate.

The Court should advise the Defendant that information in the Financial Questionnaire should be accurate and complete. Defendants knowingly providing false information or providing information that they should have known was false or inaccurate are subject to possible legal recourse. Each Financial Questionnaire form should then be signed by the defendant.

### 6.4.1 Documentation Tool

The court shall have access to certain public records to verify information furnished by defendants in the Financial Questionnaire. The Court has the right to review all available records to substantiate information provided by a defendant.

## **Minimum Attorney Qualifications**

*11/1/2017*

## 7. Expectations of Counsel

An appointed attorney shall not require a defendant to travel outside Lampasas County to meet with counsel.

All the Court appointed attorneys shall provide competent representation for their clients. An appointed attorney shall make initial contact with the defendant within 24 hours of the attorney's receipt of notice of the appointment and shall personally interview the defendant within ten (10) business days of receipt of their first notice of appointment provided the defendant is incarcerated in a local detention facility.

The attorney that is appointed on the case is expected to provide legal services for their client. At the discretion of the Court and with the consent of the client, stand-in counsel may appear on behalf of the appointed counsel provided said counsel is capable of providing competent representation for the defendant.

## 8. The Court Appointed Attorney List

Lists of attorneys approved by the Courts to represent indigent defendants for the different offense levels listed below shall be maintained by the District and County Clerk.

### 8.1 Application

Attorneys shall apply using the Lampasas County Attorney Application for Appointments as referenced in the Plan Documents. Applications with required documentation shall be submitted to the Courts. Attorneys may apply for and be placed on multiple lists.

Once approved for placement on list(s), attorneys wishing to remain on the approved list(s) of the Court appointed attorneys shall renew their application every third year prior to their birth date. Applications may be renewed by completing the Lampasas County Attorney Renewal Application form with all required documentation.

The Courts shall consider applications from attorneys wishing to be added to or remain on the approved list(s) on a monthly basis.

### 8.2 General Qualifications

To be eligible for placement on any list, attorneys shall meet the following minimum general qualifications:

- (a) An attorney must ensure all information on their application is correct;
- (b) An attorney must be licensed to practice law in the State of Texas;
- (c) An attorney must be in good standing with the State Bar of Texas;
- (d) An attorney must exhibit proficiency and commitment to providing quality representation to criminal defendants;

(e) An attorney must exhibit professionalism and reliability when providing representation to criminal defendants;

(f) An attorney must have an e-mail address;

(g) An attorney, except an attorney on the appellate list only, shall maintain a staffed office or residence within Lampasas County; or, the attorney had an office and resided outside Lampasas County on October 1, 2010, and was an attorney on the the Court Appointed Attorney List as of that date;

(h) An attorney shall agree to notify the Indigent Defense Coordinator's 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.

### 8.3 Specific Qualifications

In addition, attorneys shall meet the following specific qualifications to represent a defendant at a particular offense level.

#### 8.3.1 Misdemeanor Criminal Cases

(a) An attorney must have one year experience in handling criminal cases or have an attorney with at least three years criminal experience assigned as a mentor and the mentor is available to assist in any trial of the case; and

(b) An attorney shall complete a minimum of 6 hours of Continuing Legal Education (CLE) in the area of criminal law and procedure during each 12 month period immediately preceding their birthday. Attorneys who are not required to report CLE hours to the State Bar of Texas may comply with this requirement by furnishing a letter indicating the number of hours completed in the area of criminal law, the date(s) of the course(s) taken and the location and name of the course(s) to the the Court's office prior to their birthday.

#### (c) Criminal Defendants with Mental Health Concerns

Attorneys appointed to represent criminal defendants with mental health concerns shall be qualified through the Lampasas County Mental Health Initiative. Said attorneys shall display an interest in representing defendants with mental health issues, shall be otherwise qualified for appointment to represent indigent criminal defendants, or shall be appointed with a mentor, shall be approved by the judges,

and are encouraged to complete training through the Lampasas County Mental Health Initiative.

#### 8.3.2 Third Degree Felonies and State Jail Felonies (including Motion to Revoke or Adjudicate Third Degree or State Jail Felonies)

- (a) An attorney must have met specific qualifications for placement on Misdemeanor Cases;
- (b) An attorney must have practiced criminal law for a minimum of two years.
- (c) An attorney must have tried to verdict at least two criminal jury trials as lead or second chair counsel.

#### 8.3.3 First and Second Degree Felony Cases (including Motion to Revoke or Adjudicate First and Second Degree Felony Cases)

- (a) An attorney must have met specific qualifications for placement on Misdemeanor Cases;
- (b) An attorney must have practiced in the area of criminal law for a minimum of four years; and
- (c) An attorney must have tried to conclusion at least three criminal jury trials as lead or second chair counsel, including at least one felony trial.

#### 8.3.4 Felony Defendants with Mental Health Concerns

Attorneys appointed to represent criminal defendants with mental health concerns shall be qualified through the Lampasas County Mental Health Initiative. Said attorneys shall display an interest in representing defendants with mental health issues, shall be otherwise qualified for appointment to represent indigent criminal defendants, or shall be appointed with a mentor, shall be approved by the judges, and are encouraged to complete training through the Lampasas County Mental Health Initiative.

#### 8.3.5 Non-Death Penalty Capital Felony Cases

- (a) An attorney must have met specific qualifications for placement on Misdemeanor Cases;

(b) An attorney must have practiced in the area of criminal law for at least five years;

(c) An attorney must have tried to verdict at least five criminal jury trials as lead counsel, including at least two trials which were first or second degree felonies or capital felonies and at least one of which was a homicide case.

#### 8.3.6 Death Penalty Cases

(a) An attorney must be on the list of attorneys approved by the local selection committee of the 3rd Administrative Judicial Region for appointment in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure.

(b) To be assigned as second chair counsel in a Death Penalty Case, an attorney must be on the list of attorneys approved by the local selection committee of the 3rd Administrative Judicial Region for appointment in death penalty cases as provided in Article 26.052 of the Code of Criminal Procedure.

#### 8.3.7 Appeal Qualification Requirements

(a) An attorney must have met general qualifications and have met specific qualifications for placement on Misdemeanor Cases (except as noted in P §8.2 (g));

(b) An attorney must have met at least one of the following criteria:

a. Be currently board certified in criminal law by the Texas Board of Legal Specialization; or

b. Have personally authored and filed at least 3 criminal briefs or post-conviction writs of habeas corpus; or

c. Have submitted an appellate writing sample approved by a majority of the judges; or

d. Have worked as a briefing clerk of an appellate the Court for a period of one year or more.

#### 8.3.8 Continuing Legal Education Hours

Any attorney placed on an appointment list to represent indigent defendants shall file a certificate with the Court's office no later than their birthday each year

evidencing completion of required Continuing Legal Education (CLE) or submit documentation showing that the attorney is certified as a specialist in criminal law for that calendar year. Continuing legal education activity completed within a one year 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 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only.

The Court's office shall send an e-mail reminder regarding CLE requirements to attorneys at least 30 days before their birthday. Any attorney failing to timely submit documentation evidencing completion of the required CLE or certification as a specialist in criminal law shall be removed from the the Court appointed lists on the day after the documentation is due and placed on judicial hold. The judges hearing criminal cases may return the attorney to the Court appoint lists once documentation has been provided.

#### 8.3.9 Lampasas County Mentoring Program

Attorneys who do not meet the criteria for placement on a particular level of appointment as specified above may qualify for placement on the list of attorneys for appointment at a particular level if they successfully complete the Lampasas County Mentoring Program. The Program shall include participation in CLE activities offered through the program, assignment and use of a mentor attorney approved by the judges hearing criminal cases, and assignment of cases as 2nd chair for cases above their current skill level. An attorney must participate in the program for a minimum of 12 months and must attend 75% of all training events. Eligibility for placement on the attorney list at a level above current placement shall be determined by the judges hearing criminal cases after completion of the 12 month program. Completion of the program will not guarantee placement at the next level as that determination will be made at the sole discretion of the judges hearing criminal cases. Participation in the Bell County Mentoring Program counts as credit under the Lampasas Program.

#### 8.4 Judge Approval Process

The District Judge shall review attorney applications for appointment on the felony appointment list(s) on a monthly basis. The County Judge shall review attorney applications for appointment on the misdemeanor appointment list(s) on a monthly basis. An attorney shall be added to the appropriate list(s) upon the approval of their application by the judges hearing criminal matters with that level of offense.

When deemed appropriate by the District or County judge hearing criminal cases, a mentor may be appointed to an attorney on the appointment list. Mentors shall be appointed for a specific period of time as determined by the judges. Mentors shall advise the appointed attorney but shall not appear in the Court or represent the indigent defendant. Mentors assigned as provided in 8.4 herein are in addition to those assigned through the Lampasas County Mentoring Program in Paragraph 8.3.9 herein.

Attorneys who have submitted their applications will be notified by the Judge's office of the decision reached by the Judge related to their application.

#### 8.5 Removal from The Court Appointed List

An attorney shall be removed from the appointment list in the event that the District and/or County judge who hear criminal matters determine that good cause exists to remove an attorney from said list(s). An attorney shall be removed from the appointment list in the event that a majority of the District and/or County judges who hear criminal matters determine that the attorney has failed to meet the qualifications of § 8.2 and § 8.3 herein.

Good cause may include but is not limited to:

- (a) Failing on two or more occasions to contact or interview clients in a timely manner as required by CCP § 26.04(j)(1) and P § Sec. 7 herein;
- (b) Submitting a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;
- (c) Failing to comply with each of the appointment list qualifications herein;
- (d) Having been found, by a Texas Appellate Court, to have provided ineffective assistance of counsel.
- (e) Having been found to have violated a rule of professional conduct by the State Bar of Texas.
- (f) After having been placed on appointment list(s) has been convicted of or received a 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) Misrepresenting or providing false or inaccurate information on the attorney's application for the appointment list;
- (i) Failing to remit funds received on behalf of an investigator or expert within 14 days of receipt of said funds.
- (j) Failing to timely comply with the annual reporting requirements of the Texas Indigent Defense Commission pursuant to Texas Government Code Section 79.036 and Texas Code of Criminal Procedure Article 26.04.

#### 8.5.1 Referral

If a Judge believes that an attorney has violated, or failed to comply with any of the provisions listed in P § 8.5, the Judge may remove the attorney from the list.

#### 8.5.2 Notification/Hearing

Upon receiving a recommendation that an attorney be removed from the appointment list(s), the judge hearing that level of offense(s) shall notify the attorney in writing of the recommendation and shall inform the attorney of the basis for the recommendation.

The attorney may respond in writing to the judge or be present at a conference of the judge, at the discretion of the judge.

#### 8.5.3 Action

After the judge's meeting, the judge shall determine whether the attorney should:

- (a) Remain on the appointment list at the same level;
- (b) Be moved to an appointment list for indigent defendants charged with less serious offenses;
- (c) Be removed from the appointment list(s); or
- (d) Be given an opportunity to take correction active as determined by the judges.



At the sole discretion of the judges, removal of any attorney from any list(s) may be probated. For removal or probated removals, the Judges ordering the removal may require the completion of rehabilitative measures as a condition of probation or reapplication. An order of removal shall state the earliest date at which the attorney may apply for reinstatement. An attorney who was removed from an appointment list under section P § 8.5(g) or (h) shall be immediately reinstated upon providing proof that the charges were dismissed or that the attorney was acquitted, unless other grounds for removal exist against the attorney that would prohibit reinstatement.

The decisions of the judges are final and may not be appealed.

#### 8.5.4 Voluntary Removal

An attorney may at any time temporarily and voluntarily remove his/her name from the appointment list(s). The attorney may return his/her name to the appointment list(s) provided the attorney remains qualified for placement on said list(s). An attorney who has temporarily removed him/herself from the appointment list(s) shall continue to be appointed on additional cases filed against that defendant while the attorney is on voluntary removal.

An attorney may at any time request in writing to be permanently removed from the appointment list(s).

#### 8.5.5 Mandatory Attorney Case Reporting

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.

### **Prompt Appointment of Counsel**

*11/01/2017*

#### 8.6 Prompt Appointment of Counsel Official Notice

The Court shall provide an official notice for every complete Financial Questionnaire, regardless of whether the defendant is approved or denied.

This form shall be provided to the following parties in the documented manner:

	Eligible	Ineligible
Defendant		
- In Custody	Hand-delivered or e-mail to the jail (daily)	Hand-delivered to the jail (daily)
- Not in Custody	Mailed to current address	Mailed to current address
Attorney	(Mailed <u>and</u> faxed) or e-mailed	n/a
Clerk of the the Court	Interoffice mail or e-mail	Interoffice mail or e-mail
The Court Coordinator	Interoffice mail or e-mail	n/a
Prosecuting Attorney	Interoffice mail or e-mail	Interoffice mail or e-mail

### Attorney Selection Process

11/01/2017

#### 8.7. Appointment of Counsel

The Court shall appoint counsel no later than the end of the working day immediately following the date on which the the Court receives a complete Financial Questionnaire and determines that the defendant is entitled to the appointment of counsel.

The Court shall make attorney appointments based upon the electronic Attorney Assignment system adopted by the county, or by a rotation wheel. The Court shall not vary the computer rotation absent good cause as shown in a written order from the Court. However, the Court shall have authority to appoint qualified counsel other than by computer rotation in the event that the defendant is currently represented by said counsel on another criminal case currently pending in Lampasas County. Any appointments other than by the adopted electronic Attorney Assignment system shall be properly documented and approved by the Judge

## 8.8 To Withdraw or Substitute

Once an attorney has been appointed to represent an indigent defendant that attorney shall represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the Court to withdraw as counsel for the defendant after a finding of good cause is entered on the record.

## 8.9 Motion to Revoke

Appointment of counsel to indigent defendants pending motion(s) to revoke and/or motion(s) to adjudicate shall be made using the electronic Attorney Assignment system. This appointment shall follow the normal procedures and policies as other appointments defined herein.

## 8.10 Special Appointment by Judge

For good cause shown of record, the Court may appoint an attorney to represent an indigent defendant even though the attorney may not be the next attorney to receive such appointment through the use of the electronic Attorney Assignment System. The Court shall enter a written order of record in the case that contains finding of good cause and shall appoint the attorney of their choice to represent the defendant

## **Fee and Expense Payment Process**

*11/01/2017*

## 9. Fee and Expense Payment Process

### 9.1 Attorney Compensation

No attorney shall be compensated until the Judge approves payment after submission of the attorney fee voucher. The appointed counsel shall submit their request for compensation using the methods required by the Court. The request shall be completed and delivered to the judge hearing the case on the day that the case is finally disposed of by jury trial, trial before the Court, plea, dismissal or other final resolution of the matter.

Payment request shall be submitted no more than 30 days after the date the case is concluded.

Requests for payments for investigator and expert expenses prior to the disposition of the case are allowed with the Court approval. (Investigator and Expert Expenses are covered in P §9.5)

If the Judge fails to approve the compensation requested, the Judge shall state the amount approved for payment and shall state the reason for approval of a different amount.

## 9.2 Fee Schedule for Misdemeanor Cases

### Fee Schedules

#### Misdemeanor Cases

- (1) \$300 for each dismissal, plea, revocation or motion to adjudicate;
- (2) \$400 for each one-half day in jury trial or trial before the Court;
- (3) \$50 for each additional case(s) pending against the same defendant that is disposed of by trial, dismissal, or plea, up to a maximum of \$100\*
- (4) \$125 fee for all cases in the event of motion(s) to substitute counsel filed within 30 days of appointment
- (5) \$250 fee for all cases in the event of motion(s) to substitute counsel or withdrawal for a particular defendant are filed more than 30 days after the date of appointment
- (6) \$70/hour\*\* for appeals.
- (7) Additional \$100 for the representation of an indigent defendant with mental health concerns handled on the mental health docket.
- (8) \$50/hour for attorneys appointed second chair pursuant to the attorney mentoring program for trial, plea, dismissal, revocation, or adjudication. Fees shall not exceed \$300 except in the event of trial.
- (9) A reasonable fee upon an attorney's removal or withdrawal from all or most pending cases in which the attorney was appointed.

In exceptional circumstances and for good cause shown, an attorney may request payment at a rate in excess of the rates specified above. Payment in excess of the fee schedule herein shall be in the sole discretion of the trial Court hearing the case.

Attorneys are required to provide detailed attorney fee vouchers requesting payment for cases paid by hourly rate to the nearest .10/hour.

\* Fee applications shall be submitted at the conclusion of all pending cases against a defendant.

**\*\* Hourly rates specified above apply for all documented time incurred in the representation of the defendant in the assigned case that a qualified professional would agree was objectively reasonable and necessary for the representation of the defendant.**

### **9.3 Fee Schedule for Felony Cases**

#### **Felony Cases**

- (1) \$450 for plea, dismissal after indictment, revocation or motion to adjudicate on a State Jail or 3rd degree;**
- (2) At the election of the defense counsel, \$70/hour\* or \$450 for a plea, dismissal after indictment, revocation or motion to adjudicate on 1st degree, or 2nd degree case;**
- (3) \$70/hour\* for the trial of any felony offense;**
- (4) Additional felony cases disposed of in connection with the trial, plea, dismissal after indictment, revocation or motion to adjudicate will be compensated at the rate of \$50 per case or such hourly rate as may be appropriate;**
- (5) \$75/hour\* for appeals;**
- (6) \$75/hour for non-death penalty capital murder cases;**
- (7) \$50/hour\* for attorneys appointed second chair pursuant to the attorney mentoring program for trial, plea, dismissal, revocation, or adjudication. Fees shall not exceed \$400 except in the event of a trial.**
- (8) \$250 total fee for all cases in the event of motion(s) to substitute counsel or withdrawal for a defendant on State jail or 3<sup>rd</sup> degree offense(s) are filed within 30 days of appointment;**
- (9) \$350 for withdrawal or a motion to substitute counsel on all cases for a defendant on a State jail or 3<sup>rd</sup> degree offense(s) filed 30 days or more after appointment;**
- (10) Additional \$100 for the representation of a defendant with mental health concerns handled on the mental health docket.**
- (11) Hourly rates or fixed fees as determined by the Court on a case-by-case basis for the representation of a defendant in a death penalty capital felony.**
- (12) A reasonable fee upon an attorney's removal or withdrawal from all pending cases in which the attorney was appointed.**

**In exceptional circumstances and for good cause shown, an attorney may request payment at a rate in excess of the rates specified above. Payment in excess of the fee schedule herein shall be in the sole discretion of the trial the Court hearing the case.**

Attorneys are required to provide detailed attorney fee vouchers requesting payment for cases paid by hourly rate to the nearest .10/hour.

\*Hourly rates specified above apply for all documented time incurred in the representation of the defendant in the assigned case that a qualified professional would agree was objectively reasonable and necessary for the representation of the defendant.

#### 9.4 Appeal/Writs

\$70.00 per hour for misdemeanor cases

\$75.00 per hour for felony cases.

#### 9.5 Veterans Treatment The Court

The attorney appointed to represent indigent defendants in the Veterans Treatment Court shall be paid in accordance with the terms of the contract(s) for defender representation in that The Court.

In exceptional circumstances and for good cause shown, an attorney may request payment at a rate in excess of the rates specified above. Payment in excess of the fee schedule herein shall be in the sole discretion of the trial the Court hearing the case. Attorneys are required to provide detailed attorney fee vouchers requesting payment for cases paid by hourly rate to the nearest .10/hour.

\*Hourly rates specified above apply for all documented time incurred in the representation of the defendant in the assigned case that a qualified professional would agree was objectively reasonable and necessary for the representation of the defendant.

#### 9.5 Investigators and Expert Expenses

Counsel appointed in a non-capital case shall be reimbursed for reasonable and necessary expenses for investigation, for mental health experts and for other experts. Expenses shall be reimbursed as provided herein.

Attorneys shall submit original invoices for investigator and expert witness fees at the time that they submit their attorney fee voucher for payment. Payments for

expert and investigator fees shall be paid to the attorney at the time their attorney fee voucher is paid. Attorneys shall remit fees received on their voucher to the appropriate experts and investigators within 14 days of their receipt of said fees. Failure to timely remit said funds may result in removal of the attorney from the Court appointment lists.

#### 9.5.1 With Prior Court Approval

Appointed counsel may file with the trial the 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 that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
3. an estimate of the cost of said investigator/expert.

The Court shall grant the request for payment of expenses in whole or in part if the request is reasonable or deny the request for payment.

#### 9.5.2 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 payment of the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses shall not be paid.

#### 9.6 Payment Processing

Attorney Payments will be processed in coordination with Lampasas County Current Accounts Payable policies and procedures.

## **Miscellaneous**

*11/01/2017*

### Miscellaneous

#### 10. Monitoring and Oversight

The Court shall monitor compliance with the provisions of the plan. An attorney's failure to comply with the provisions of the plan shall be documented by the Court and may result in removal of an attorney from representation of an indigent defendant in a particular case and/or removal of an attorney from the list of eligible the Court appointed counsel for a period of time or permanently. In the event that an attorney fails to comply with the provisions of the plan, the Court shall notify the attorney by e-mail or fax and shall request prompt compliance with the provisions of the plan.