

**OFFICE OF COURT MANAGEMENT
HARRIS COUNTY CRIMINAL COURTS AT LAW**

JUDGES

Hon. Paula Goodhart
County Criminal Court
At Law Number 1

Hon. William Harmon
County Criminal Court
At Law Number 2

Hon. Natalie C. Fleming
County Criminal Court
At Law Number 3

Hon. John Clinton
County Criminal Court
At Law Number 4

Hon. Margaret S. Harris
County Criminal Court
At Law Number 5

Hon. Larry Standley
County Criminal Court
At Law Number 6

Hon. Pam Derbyshire
County Criminal Court
At Law Number 7

Hon. Jay Karahan
County Criminal Court
At Law Number 8

Hon. Analia Wilkerson
County Criminal Court
At Law Number 9

Hon. Dan Spjut
County Criminal Court
At Law Number 10

Hon. Diane Bull
County Criminal Court
At Law Number 11

Hon. Robin Brown
County Criminal Court
At Law Number 12

Hon. Don Smyth
County Criminal Court
At Law Number 13

Hon. Mike Fields
County Criminal Court
At Law Number 14

Hon. Jean Spradling Hughes
County Criminal Court
At Law Number 15

Hon. Linda Garcia
County Criminal Court
At Law Number 16



STAFF

Ed Wells
Court Manager

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December 9, 2016

Hon Sharon Keller
Chair, Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, TX 78701

Hon. Olen Underwood
Vice Chair, Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, TX 78701

Mr. Jim Bethke
Executive Director, Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, TX 78701

Re: Response to TIDC Policy Monitoring Review dated October 7, 2016

Judges Keller and Underwood and Mr. Bethke:

On behalf of the 16 Harris County Criminal Court at Law judges, I submit the attached response to your office's monitoring review of our misdemeanor courts. We appreciate the time and effort your office has given to this project and have attempted to respond to your recommendations thoroughly. Where possible, we've detailed practical limitations or concerns that apply in Harris County but might not apply elsewhere.

As you know, our jurisdiction presents the largest volume of criminal work in the state. In 2014 the Harris County District Attorney filed approximately 64,918 new misdemeanor cases in our courts. In 2015 we processed 69,665 cases, of which 33,885 received appointed counsel at an approximate cost of \$3,367,198. We expect that this number will continue to grow.

We look forward to continuing the dialogue we've enjoyed with you and your staff for many years as we improve indigent defense in our courts. Your help and experience will prove especially useful as we continue exploring managed assigned counsel and how it might work in our jurisdiction.

Should you need additional information, please do not hesitate to contact me.

Sincerely,

Hon. Margaret Harris, Presiding Judge
County Criminal Courts at Law
Harris County, Texas

cc: Hon. Ed Emmett, Harris County Judge
Hon. Gene L. Locke, Harris County Precinct One Commissioner
Hon. Jack Morman, Harris County Precinct Two Commissioner
Hon. Steve Radack, Harris County Precinct Three Commissioner
Hon. R. Jack Cagle, Harris County Precinct Four Commissioner
Mr. Bill Jackson, Harris County Budget Management Director
Mrs. Barbara J. Schott, Harris County Auditor

HARRIS COUNTY CRIMINAL COURTS AT LAW

Response to TIDC Policy Monitoring Review Issued on October 7, 2016

The Harris County Criminal Courts at Law (CCCL) offer the following response to the “Policy Monitoring Review of Harris County’s Misdemeanor Indigent Defense Systems” report issued on October 7, 2016, by the Texas Indigent Defense Commission.

Bolded quotations are taken directly from the report and are followed by responsive comments.

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

RECOMMENDATION 1: Article 15.17 requires Harris County magistrates ensure reasonable assistance in completing forms necessary to obtain appointed counsel so that all arrestees who request counsel can have the request ruled upon within statutorily required timeframes.

“Harris County uses a direct filing system to prosecute criminal cases. Following arrest, officers take arrestees to substations for identification and background checks. Officers then generate field reports that are reviewed on an around-the-clock basis by prosecutors. Prosecutors reviewing cases decide whether to file a case and with what charge, in addition to recommending an initial bail amount.” Harris County’s system uses a two-layer review on the front end. An officer first calls a 24-hour District Attorney intake phone number to speak to a prosecutor about his or her investigation. The prosecutor initially reviews the case and either accepts a charge(s), declines a charge(s), or advises the officer that additional investigation is needed prior to any charging decision. If charges are accepted, the officer generates a field report establishing the basic facts. Once the field report is accessible to the District Attorney, a prosecutor reviews it to ensure that sufficient facts warrant the charge. If they don’t, the prosecutor will reject the charge. If they do, the

prosecutor will draft charging paperwork and recommend an initial bail amount based on an initial bail schedule promulgated by the County Criminal Courts at Law.

“Harris County Criminal Law Hearing Officers act as magistrates and conduct Article 15.17 hearings for all other arrestees around the clock by videoconference from the Harris County Criminal Courthouse.” Most Article 15.17 proceedings are completed by teleconference with the arrestee located at the Harris County Jail, but some are conducted in person.

“However, the financial data used for appointing counsel is not gathered until the defendant appears in the court of dispositive jurisdiction.” Pretrial Services gathers financial information for each arrestee that it interviews. Please see response to Recommendation 1, below, for further details.

Additional response relevant to Recommendation 1: The Pretrial Services Department currently interviews nearly all arrestees prior to their Article 15.17 proceeding (exceptions exist for those in immediate medical crisis, those refusing to be interviewed, etc.). This interview includes questions designed to elicit all financial information necessary for an indigency determination and bail considerations. The interview also includes information about the arrestee’s household situation and family ties, length of residency, employment history, education, prior criminal record, and any other pending cases. Pretrial Services then generates a short form, including the collected financial information and a risk assessment, and provides it to the Criminal Law Hearing Officer (CLHO) performing the Article 15.17 proceeding. If the arrestee requests appointed counsel, the deputy clerk working with the CLHO enters the request into the county’s electronic Justice Information Management System (JIMS) and the CLHO notes the request on a form entitled “Probable Cause for Further Detention & Statutory Warnings by Magistrate.”

Currently, only the judge presiding over the court of original jurisdiction has the authority to determine indigence and appoint counsel in a Class A or B misdemeanor case in Harris County. The judge has access to the JIMS system and the Pretrial Services short form used by the CLHO, as well as a longer Pretrial Services form containing more information. Many judges have not accessed those forms and, instead, have chosen to gather fresh financial information directly from the defendant. In addition, the Harris County District Clerk’s Office currently sends the “Probable Cause for Further Detention & Statutory Warnings by Magistrate” form (with its notation that the arrestee requested

appointed counsel) to its imaging department rather than sending them to the court of dispositive jurisdiction.

In order to shore up the system's efficiency, the CCCL Judges recently sent a letter to the Harris County District Clerk directing him to ensure that all "Probable Cause for Further Detention & Statutory Warnings by Magistrate" forms are transmitted to the court of dispositive jurisdiction within 24 hours of a Defendant's request for appointed counsel. This will provide a second safeguard beyond the JIMS system for ensuring that the Defendant's request is transmitted timely to the authority for appointment of counsel. The CCCL judges also recently voted to adopt a new single-page indigency declaration that can be used by Pretrial Services during its initial interview of in-custody arrestees. The County Criminal Courts at Law hope to work with the District Courts Trying Criminal Cases and Pretrial Services to implement a program whereby the arrestee verifies and signs the declaration and it is electronically transmitted to the court of dispositive jurisdiction in real time. Although the CCCL judges can currently access any financial data collected by Pretrial Services during their initial interview with the arrestee, a new system such as the one envisioned here would streamline the process for evaluating an arrestee's indigence by presenting all relevant information on a single page that is signed by the arrestee.

REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN

RECOMMENDATION 2: The county courts must follow the indigence standard set in the local indigent defense plan.

RECOMMENDATION 3: Per Article 26.04(p), determinations of indigence may only be reconsidered if there is a material change in the defendant's financial circumstances.

RECOMMENDATION 4: As required by Article 26.04(j)(2), unless there is a finding of good cause entered on the record, the attorney-client relationship cannot be disturbed.

RECOMMENDATION 5: In accordance with Article 26.04(m), when making indigence determinations, the appointing authority may not consider whether a defendant has posted bail, except to the extent that it reflects the defendant's financial circumstances.

Response to Recommendations 2-5: The County Criminal Courts at Law local indigent defense plan currently contains the following provisions:

- The plan defines “indigent” as financially unable to employ counsel. *See* Rules 24.1.17 and 24.4.2. This standard applies to each defendant equally, regardless of whether the defendant is in custody or has been released on bail. *See* Rule 24.4.2.
- The judge or hearing officer conducting an Article 15.17 proceeding must inform the defendant of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel in the trial court, inquire as to whether the defendant is requesting appointed counsel, and note the defendant's response. *See* Rules 24.2.8.1 and 24.2.12.
- A judge may appoint counsel, in the interests of justice, to a defendant regardless of the defendant's financial status. *See* Rule 24.3.2.
- In determining whether a defendant is indigent, a judge may require that the defendant respond to questions about the defendant's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided—however, any request for documentation or verification cannot delay appointment of counsel beyond the timelines specified in TEX. CODE CRIM. P. ANN. art.

1.051. *See* Rule 24.4.1.

- In determining whether a defendant is indigent, a judge shall consider: (1) the defendant's income; (2) the source of any income; (3) any assets or property owned by the defendant or in which the defendant has an interest; (4) outstanding obligations; (5) necessary expenses; (6) the number and ages of dependents; and (4) any spousal income that is available to the defendant. *See* Rule 24.4.3.
- A defendant is presumed indigent if his net household income does not exceed 125% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register. *See* Rule 24.4.4.1.
- A defendant determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the defendant's financial circumstances occurs. *See* Rule 24.4.4.2.
- A defendant's indigency status can be reviewed at any time, although it is presumed not to have changed unless rebutted by: (1) evidence that there has been a material change in the defendant's financial circumstances, as a result of which the defendant does not meet any of the standards for indigence contained in the rules; or (2) additional information regarding the defendant's financial circumstances that shows that the defendant does not meet any of the standards for indigence contained in the rules. *See* Rule 24.4.6.
- Any incarcerated defendant shall appear in the court of dispositive jurisdiction the next business day after the Article 15.17 proceeding. Prior to arraignment, that judge is to make inquiries necessary for appointing counsel and appoint counsel if the defendant is deemed indigent. *See* Rule 24.9.1.
- Any defendant released on bond shall appear in the court of dispositive jurisdiction seven days after his/her release from custody. Prior to arraignment, that judge is to make inquiries necessary for appointing counsel and appoint counsel if the defendant is deemed indigent. *See* Rule 24.9.2.

The monitor notes that CCCL judges liberally appoint lawyers to defendants in custody, sometimes without formally inquiring about indigence or finding them indigent. The monitor further notes that the local rules do not affirmatively create a presumption of indigence for any defendant in custody. Although this is true, appointment of counsel to in-custody defendants comports with the interests of justice provisions in Article 26.04(c) and Local Rule 24.3.2 even absent an indigency finding.

A court may employ all powers necessary to exercise its jurisdiction and enforce its lawful orders. *See* TEX. GOV'T CODE § 21.001. The Texas Constitution and Government Code require courts to conduct proceedings in an orderly and expeditious manner so that justice is done. In an effort to efficiently address about 70,000 cases each year and ensure due process for every defendant, some CCCL judges may appoint attorneys to jailed defendants in the interest of justice and without ever making an indigency determination. Unrepresented jailed defendants are often unable to communicate with the court, advocate for bond, engage in discussions with the State, or bring other matters to the court's attention such as mental health concerns. Financial inquiries are unnecessary when appointing counsel in the interests of justice. The Texas Constitution, Government Code, and Texas Code of Criminal Procedure all recognize a court's inherent authority to appoint in this regard. Specifically, Article 26.04(c) of the Fair Defense Act authorizes the appointment of counsel in the interest of justice:

Whenever a court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines for purposes of a criminal proceeding *that a defendant* charged with or appealing a conviction of a felony or a misdemeanor punishable by confinement *is indigent or that the interests of justice require representation* of a defendant in the proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to represent the defendant in accordance with this subsection and the procedures adopted under Subsection (a).

See TEX. CODE CRIM P. ANN. art. 26.04(c) (emphasis added).¹ This language neither reserves "interests of justice" appointments to indigent defendants nor attaches an indigency presumption to a defendant represented by counsel in the interests of justice.² Thus, Article 26.04(c) does not restrict a court's authority to appoint counsel; it expands it.

The monitor further faults Harris County because one or more judges purportedly interrupt the attorney-client relationship by examining indigence after such a defendant is released from custody. The monitor does not specify whether these cases involve

¹ "Interests of justice" is not statutorily defined, but at least one Houston appellate Court has recognized its discretionary nature. *White v. State*, No. 01-15-00294-CV, 2015 WL 7819734, at *3 (Tex. App.—Houston [1st Dist.] Dec. 3, 2015, no pet.) (not designated for publication). "Texas courts have long accorded trial courts broad discretion within the standard 'in the interest of justice.'" *Id.*, quoting *Baker v. Bell Helicopter Textron, Inc.*, 985 S.W.2d 272, 276 (Tex.App.—Fort Worth 1999, pet. denied).

² Such a presumption attaches only if the judge affirmatively determines that the defendant is indigent. *See* TEX. CODE CRIM P. ANN. art. 26.04(p).

defendants that have been previously been found indigent or defendants that have been appointed counsel in the interests of justice with no prior indigence finding. The monitor implies that all such cases involve prior indigency determinations that enjoy a rebuttable presumption of continued indigency. The monitor faults the county for “re-inquiring” into indigence (which is only the case if indigency had been previously determined and, if it had, is permissible under Article 26.04(m) and (p) to determine if the facts surrounding the bail posting signify a material change in the defendant’s financial circumstances), encouraging the defendant to hire an attorney, or expecting the currently appointed attorney to withdraw.

The Harris County Criminal Courts at Law either reaffirm these precepts, or are pursuing these changes, to improve its system for appointing counsel and ensuring the attorney-client relationship’s continuity:

1. CCCL judges will follow the indigence standard set forth in the local indigent defense plan.
2. Pretrial Services will enter all financial data it collects from a defendant that is relevant to an indigency determination (and included on the defendant’s financial affidavit) into a database accessible by the Harris County Office of Court Administration.
3. The County Criminal Courts at Law will develop an algorithm that evaluates each defendant’s financial situation in light of the federal poverty guidelines.
4. The Harris County Office of Court Administration will automatically send each CCCL judge a list of newly arrested defendants (that have requested counsel) that identifies which defendants satisfy the presumption of indigence (at or below 125% of the federal poverty guidelines) based on the defendants’ self-reported financial data.
5. CCCL judges will make express indigency findings based on the automatic report for anyone satisfying the presumption, absent good cause to believe otherwise (i.e., the defendant has reasonable income but few or no expenses). “Good cause to believe otherwise” does not include the fact that a defendant may have posted bail, except to the extent that it reflects the defendant’s financial circumstances.
6. CCCL judges will further review indigency factors using information collected by Pretrial Services, and additional inquiry if necessary, for those that do not meet the presumption (i.e., income exceeds federal poverty guidelines, but expenses make it unreasonable to believe that the defendant can afford competent counsel in his/her case). CCCL judges will not consider the fact that a defendant may have posted bail, except to the extent that it reflects the defendant’s financial circumstances.

7. A prior affirmative finding of indigence will not be reconsidered absent a material change in the defendant's financial circumstances.
8. No defendant represented by counsel will have his/her case postponed on the sole basis that they were released from custody and need to provide proof of financial condition or seek private counsel.
9. A CCCL judge will initially question a defendant who was appointed counsel on the basis of indigence while in custody, and was thereafter released from custody, to determine if the circumstances surrounding his/her release from custody indicate a material change in financial circumstances. If not, the attorney-client relationship remains undisturbed. If so, the court-appointed attorney will be ordered to withdraw for good cause and the defendant's case will be reset to hire a lawyer (absent a determination that the interests of justice require the court-appointed lawyer to remain as counsel).

**REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY
QUALIFICATIONS**

(No recommendations)

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

RECOMMENDATION 6: Article 1.051(c)(2) requires misdemeanor requests for counsel be ruled upon within one working day (plus 24 hours allowed for transferring requests to the courts) of the request being made. The county must implement practices that satisfy Article 1.051(c)(2)'s timeline.

Description of Local Counsel Appointment Procedures: An arrestee's first opportunity to request appointed counsel is generally at the Article 15.17 proceeding before a hearing officer. This triggers the hearing officer's duty to transmit the request to the appointing authority within 24 hours, and the attendant duty for the appointing authority to determine indigence and appoint counsel (if appropriate) by the end of the first business day after receiving the request. In Harris County, the CCCL judge is currently the only entity with authority to determine indigence and appoint counsel.

The monitor's footnote addressing *Rothgery v. Gillespie County* (footnote 16) is curious and potentially confusing. *Rothgery* noted that an Article 15.17 proceeding marks the beginning of adversarial judicial proceedings, triggering the duty to appoint counsel. *Rothgery*, 554 U.S. 191, 199, 128 S.Ct. 2578, 2584 (2008) ("Texas's article 15.17 hearing is an initial appearance: Rothgery was taken before a magistrate, informed of the formal accusation against him, and sent to jail until he posted bail."). *Rothgery*, however, did not mandate the timing for appointment of counsel. In that regard, the Court noted first that the majority of jurisdictions "take the first step toward appointing counsel 'before, at, or just after initial appearance.'" *Id.* at 204, 2587. It then recognized that "counsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself." *Id.* at 212, 2591. Although an Article 15.17 proceeding may signal the initiation of adversary judicial proceedings, the Court cautioned—and Justices Roberts, Scalia, and Alito carefully elaborated in concurrence—that "[t]he question whether arraignment signals the initiation of adversary judicial proceedings ... is distinct from the question whether the arraignment itself is a critical stage requiring the presence of counsel." *Id.* at 212, 2591 (majority), 213, 2592 (Roberts, C.J., concurring), 218, 2591 (Alito, J., concurring) ("It follows that defendants in Texas will not necessarily be entitled to the assistance of counsel within some specified period after their

magistrations. Texas counties need only appoint counsel as far in advance of trial, and as far in advance of any pretrial “critical stage,” as necessary to guarantee effective assistance at trial.”) (internal references removed). Thus, *Rothgery* stands for the proposition that an Article 15.17 proceeding marks the beginning of adversarial judicial proceedings against a defendant, and the government must appoint counsel to an indigent defendant within a reasonable time period following the proceeding.³

The monitor notes that, for any defendant released from custody, Article 1.051(j) requires the appointment of counsel at the point when adversarial judicial proceedings are initiated. In cases where defendant had been presented for an Article 15.17 proceeding, the monitor implies that *Rothgery* would mandate the *immediate* appointment of counsel:

Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant’s first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

TEX. CODE CRIM. P. ANN. art. 1.051(j) (emphasis added). Article 1.051(j) appears intended towards those defendants that are released from custody prior to an Article 15.17 hearing. The monitor’s analysis would suggest that the timeline for appointment of counsel is potentially *sped up* for someone that is *released from custody*. Given that a defendant could be released from custody immediately after an Article 15.17 hearing, and well before the magistrate’s typical deadline for transmitting any request for counsel (much less the sole appointing authority’s deadline to appoint counsel), the proffered interpretation seems unworkable and statutorily unintended. Article 1.051(j) triggers the *duty* to appoint counsel—as opposed to the actual appointment of counsel—at the point of the Article 15.17 proceeding. The CCCL judges agree that the magistrate’s deadline for transmitting any request for counsel, and the judge’s deadline to assess indigence and appoint counsel, are unaffected by a defendant’s release from custody after the Article 15.17 hearing.

Timeliness of Appointments in Misdemeanor Cases and Other Findings from Case files: The monitor reviewed 202 cases where a defendant requested counsel, finding:

³ The right of an appointed counsel to demand 10 days’ notice to prepare for any adversarial hearing further supports this analysis. *See* TEX. CODE CRIM. P. ANN. art. 1.051(e).

- The request was timely addressed in 145 cases;
- The request was addressed, but a day late in 14 cases;
- The request was addressed, but more than a day late in 19 cases; and
- The records did not show a ruling on the request in 24 cases.

Based on the foregoing, the monitor implied that the 24 latter cases might have entered uncounseled, invalid pleas.

Harris County does **NOT** allow any defendant to enter an uncounseled plea absent an intelligent, voluntary waiver of counsel—which is discouraged and occurs in exceedingly few cases. The fact that the monitor’s sample included only one sample case with a waiver of counsel, and that sample case had no pending request for counsel (and was therefore outside the original sample of 202 cases and must have been in the overall sample of fiscal year 2014 cases), speaks to this occurrence’s infrequency.

It is unclear what caused the untimely appointments. Under the local indigent defense plan and its implementation, each court has 18 attorney “slots” per week, with each attorney having a capacity of five new clients per slot. It is possible that attorneys were unable to accept new appointments because they had received the maximum number of daily cases. It is also possible that some defendants who requested counsel at their Article 15.17 proceeding were released on bond prior to their first court appearance, which generally postpones their appearance in court for a week (rather than the next business day). The additional response to Recommendation 6 will address corrective action.

Additional response relevant to Recommendation 6: As outlined in the response to Recommendations 2-5, the CCCL judges are working with the Pretrial Services Department to adopt an automated process for anyone requesting counsel at the Article 15.17 proceeding. That process will extract relevant financial and circumstantial information gathered by Pretrial Services and insert it into an algorithm to identify which defendants are presumed indigent under the 125% of federal poverty guidelines standard. The algorithm results will be transmitted to the CCCL judge for each defendant at a yet-to-be-determined time that is well within the statutory deadline. This will be done for each defendant that requests counsel at their Article 15.17 proceeding, regardless of whether they are released from custody prior to their first appearance before their assigned judge. This will also alert the judge of all pending requests for counsel (since, apart from the Article 15.17 proceeding, requests for counsel are only made in the trial court as a practical matter). The assigned judge will then determine indigence and appoint counsel (if indigent), even if the

defendant is not presently in court. In addition, the Local Rules for the County Criminal Courts at Law will be amended to clarify that a defendant's release from jail between an Article 15.17 proceeding and his or her first appearance in the court with dispositive jurisdiction does not affect the statutory timeline for assessing indigence and appointing counsel.

REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS

RECOMMENDATION 7: The county courts must implement a system meeting the Commission's Contract Defender Rules for all term assignments exceeding one week. This includes a notification for attorneys to apply to be a contractor. Executed contracts must contain all required terms. The latest indigent defense plan indicates the county courts intend to follow the Contract Defender Rules.

“The Harris County Criminal Courts at Law are comprised of sixteen county courts with daily dockets.” During the period of review (FY14), the Harris County Criminal Courts at Law were comprised of fifteen courts, although there are currently sixteen. County Criminal Court at Law 16 took effect on January 1, 2016.

“The monitor's review identified instances in which term assignments appeared to be renewed in particular courts, resulting in assignments to a court beyond the six-month maximum.” A subset of these cases involves fugitive cases that are: (1) voluminous enough to require daily fugitive dockets; and (2) all assigned to County Court at Law No. 10. In FY14 there were only two attorneys qualified under the local plan to represent defendants held on fugitive/extradition matters. Those attorneys worked continuously because no other attorneys were qualified under the plan. The attorney supply has now increased (three attorneys are qualified and approved currently), but so has the demand. Pursuant to TEX. CODE CRIM. P. ANN. art. 1.051(c-1), all defendants arrested on warrants originating in a different county and still in custody on the 11th day following arrest are automatically assigned to appear in County Court at Law No. 10 for appointment of

counsel. The local plan has expanded the fugitive attorney qualifications to include these types of cases, as they are similar in nature to extradition matters. As a result, Harris County still lacks sufficient attorneys qualified as fugitive attorneys to handle the respective cases in Court 10 without exceeding a 6-month term. The county will continue working to identify and qualify counsel to ease pressure in this area.

Workloads Under the Term Assignment System: The monitor notes that 58 attorneys exceeded the recommended 228 misdemeanor cases in FY14, and 18 of them disposed of over 600 cases that year.⁴ According to a survey, most attorneys thought defendants received quality representation and thought appointments were fairly distributed. Some did not. The CCCL judges have done, or are working to do, at least four things to address these concerns. First, the CCCL judges have been actively encouraging attorneys on the appointment list to voluntarily remove themselves if they are not in a position to receive appointments, and to request reinstatement when they become available in the future.⁵ Second, the CCCL judges have amended the local plan to allow for the removal of an attorney from the appointed attorney list if the lawyer repeatedly declines appointments. Third, the CCCL judges have amended the local plan to reduce the maximum number of new clients a lawyer can accept per day from 7 to 5, and have capped each lawyer at 600 cases annually. Should any lawyer receive this many appointments, they are prohibited from receiving any additional appointments until the yearly cycle renews. Fourth, the CCCL judges have met numerous times to discuss adopting a managed assigned counsel program, and have gone so far as to begin drafting a grant application to TIDC. If approved, a managed assigned counsel program would manage the training and coordination of appointed counsel in criminal cases.

Additional response relevant to Recommendation 7: The Harris County Criminal Courts at Law will work with the Harris County Attorney's Office to ensure that all attorneys approved to receive appointments are in compliance with the Contract Defender Rules.

⁴ Texas A&M's determination of 228 *general* misdemeanor cases seems at odds with the National Advisory Commission's standard of 350 *specialized* misdemeanor cases involving mental health skills (that also require general criminal defense skills).

⁵ Given the ebb and flow of retained legal work, some lawyers want to remain on the list of attorneys eligible to receive appointments only as a backup plan during ebbing times. Such lawyers generally decline term assignments during flowing times, which creates misleading appointment statistics.

REQUIREMENT 6: PROMULGATE STANDARD ATTORNEY FEE SCHEDULE AND PAYMENT PROCESS

RECOMMENDATION 8: Per Article 26.05(c), Harris County must implement a method to ensure that no payment is made without the proper judge authorizing payment. The ViPS payment system may provide safeguards to prevent unallowable payments.

RECOMMENDATION 9: In accordance with Article 26.05(c), Harris County must implement a method for judges to document reasons for disapproving a requested amount of payment. This practice appears to have been successfully implemented with the new ViPS payment system.

Response to Recommendation 8: The ViPS system in use since October 1, 2015, implements Fee Schedule rules that prevent an attorney from submitting requests for “unallowable payments.” Attorney-submitted Fee Vouchers are electronically filed with the District Clerk and routed to the judge for authorization. Only judges are granted authorization permissions within the system.

Response to Recommendation 9: In accordance with Article 26.05(c) and Local Rule 24.12.9, if the judge rejects the requested amount or approves an amount different than that requested, the judge must make written findings in the ViPS system. The findings are recorded and are available for the attorney to review and make corrective actions as needed.

REQUIREMENT 7: STATUTORY DATA REPORTING

RECOMMENDATION 10: Harris County must implement procedures to ensure that unallowable expenses are not reported on the IDER.

RECOMMENDATION 11: Harris County must implement procedures to ensure that transcript fees for appeals cases are reported as appellate expenses.

Response to Recommendations 10 and 11: The monitor references “general ledger data” for expenses reported on the FY14 IDER. This data was reported across 40 criminal and juvenile courts, including misdemeanor, felony, and juvenile courts. The monitor faults the county for over \$400,000 in attorney pro tem-related expenses, but did not identify how much of this number was attributable to the County Criminal Courts at Law, if any. The Harris County Criminal Courts at Law accounted for less than half of these courts in FY14. Moreover, fault assessed by the monitor for CPS cases in the juvenile courts is misplaced upon the Harris County Criminal Courts at Law, as those courts lack original or appellate jurisdiction over juvenile cases.

The monitor’s note regarding felony appellate expenses for statements of fact is similarly misplaced upon the Harris County Criminal Courts at Law, as those courts do not have original or appellate jurisdiction over felony cases.

Additional Response Relevant to Recommendation 10: Harris County has implemented an improved change control procedure to ensure correct expense reporting in the IDER report. This was used in the recent 2016 IDER report submission and for IDER 2017 which will make use of the newly implemented features of the ViPS system.

Additional Response Relevant to Recommendation 11: It is currently impossible to separate transcript fees for criminal appeal cases from other types of cases. The county has removed all Statement of Fact expenses for IDER 2016 in an abundance of caution, and is reviewing existing procedures to create a method whereby future IDER reporting will only include transcription fees where appropriate.