



# **Review of Smith County's Indigent Defense Systems**

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The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

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## **Purpose of Review**

The Texas Indigent Defense Commission (Commission) is required to monitor local jurisdictions' compliance with the Fair Defense Act (FDA).<sup>1</sup> In follow-up to the previous assessments, the policy monitor conducted a limited scope review in Smith County to: 1) determine whether the County has addressed previous findings; 2) review the procedures for tracking data reported to the Commission; and 3) assess actual operations of the contract defender system, including the procedures for the determination of indigence and appointment of contract counsel.

## **Background**

In 2006 the Commission's fiscal monitor conducted a monitoring review of Smith County's indigent defense records. Among the findings of that report were a lack of documentation of attorneys on appointment lists and lack of documentation showing that attorneys were in compliance with continuing legal education requirements. Smith County operates a contract defender system that handles most of its indigent felony cases, but this system was not the focus of the 2006 review because the Commission's Contract Defender Rules had not yet gone into effect.<sup>2</sup>

In 2011 the Commission conducted a statewide desk review of contract defender systems to determine whether each contract defender program met the requirements of the Contract Defender Rules. No report was issued to the individual counties operating these programs; however, a summary of the review was presented at the Commission's August 25, 2011 board meeting. The summary stated that Smith County's contract did not appear to meet the Contract Defender Rules because at that time the felony defender contracts did not contain maximum caseload limits. As a result of the desk review, Smith County inserted maximum annual contract caseloads of 500 trial-level felony cases and 175 appeals cases.

In 2013 the fiscal monitor conducted a second monitoring review with a visit to Smith County from February 5-7, 2013. This review focused on the contract defender system and examined whether the contracts met each of the Contract Defender Rules. This fiscal monitoring report included some findings regarding the contracts, noting that there was no provision for reimbursement of investigative and expert witness expenses without prior approval from the judge and that monthly payments were sometimes made to contract attorneys without submission of a voucher by the attorney. The latter finding had implications for the accuracy of the regular indigent defense data reports the County provides to the Commission. These vouchers are the source for identifying the number of indigent defense cases disposed during the year and that are used for reporting data to the Commission on the Indigent Defense Expense Report (IDER). If the vouchers are not submitted, the reported totals of indigent cases paid cannot be accurately ascertained.

Smith County responded to these findings by amending their procedures for handling vouchers and by amending the contracts. As to the contract amendments, a new provision was added that allowed reimbursement for investigative and expert witness expenses without prior approval from a judge. As for maximum caseloads, the maximum felony trial-level caseloads were reduced from 500 cases per year to 300 cases per year. The appellate caseloads remained at a maximum of 175 appeals per year.

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<sup>1</sup> Tex. Gov't Code § 79.037(a)-(b).

<sup>2</sup> The rules are codified in 1 Tex. Admin. Code §§ 174.1 – 174.25 and went into effect on January 1, 2007.

## **Timeline and Methodology**

For this review Commission staff made two visits to Smith County: September 3-4, 2013 and December 2-4, 2013. Throughout this report, all references to Commission staff use the term “monitor.” The monitor used interviews, observations, and examinations of records to examine the operation of the contract defender system and to document the procedures for tracking data reported to the Commission. As part of the analysis of the operation of the contract defender system, the monitor examined the procedures in place for determining indigence and appointing counsel.

The monitor met with the following persons: the district judges trying felony cases; the county judge; a county commissioner; the justices-of-the-peace; county auditor’s office staff; sheriff’s office staff; all criminal defense attorneys who were part of the felony contract defender system; and other criminal defense attorneys practicing within the county. The monitor also observed Article 15.17 hearings. The monitor examined the following records: felony case files in the district clerk’s office (some examined electronically to document case dispositions and some through the actual paper files to document case events); auditor’s office reports, including monthly contract attorney reports to the County; Texas Appeals Management and E-filing System (TAMES) online queries for appellate cases; the local indigent defense plan; and Texas Judicial Council Monthly Court Activity Reports to the Office of Court Administration (OCA).

## **Summary of Current Review**

The background section above presented a history of the Commission’s monitoring activities in Smith County to date. The present monitoring review focuses on three aspects of the indigent defense system: first, on methods to determine indigence and assign counsel; second, on the operation of the contract defender system; and third, on methods to capture and report indigent defense data.

## **Methods to Determine Indigence and Assign Counsel**

The effectiveness of the contract defense system is, in part, dependent upon the methods in place to determine indigence and assign counsel. The monitor found that at Article 15.17 hearings, the County does not capture the following information for all arrestees as required by Article 15.17(e) of the Code of Criminal Procedure: (1) the magistrate informing the person of the right to counsel; (2) the magistrate asking if he/she wants to request appointed counsel; and (3) whether the person requested appointed counsel. The monitor also found the current case management system is not set up to report the number of requests for counsel in Texas Judicial Council Monthly Court Activity Reports, but one of the justices-of-the-peace has found a way to manually track and report requests for counsel. To meet statutory requirements, all persons at the Article 15.17 hearing must be given an opportunity to request counsel at the hearing, all requests must be recorded, and the total number of persons requesting at the hearing must be reported in the Texas Judicial Council Monthly Court Activity reports.

## **Operation of the Contract Defender System**

The 2013 fiscal monitoring report made a comment about the maximum felony caseloads allowed under the contract. In response to this comment, the maximum number of trial-level felony cases was reduced from 500 cases per year to 300 per year. The maximum number of appellate cases remained at 175 per year.

In the current review, the monitor interviewed contract attorneys who voiced differing opinions about their caseloads. Attorneys stated that the felony contracts represent between 50% and 85% of their practices. Some attorneys felt caseloads were manageable, while others did not. In particular, the

appellate attorneys noted great difficulties in meeting with clients and in filing briefs in a timely manner. A query of their appeals in the 12<sup>th</sup> Court of Appeals revealed 70% of their cases included at least one request for an extension of time to file the appellate brief, and over 20% of their cases contained notices of late docketing statements. Smith County courts could benefit from an internal evaluation of the methods in place to ensure quality representation by contract defenders. Such an evaluation could include an examination of attorney workloads and attorney-client meetings. The caseloads of appellate attorneys may necessitate an additional attorney to handle indigent appeals.

### **Methods to Capture and Report Indigent Defense Data**

The 2013 fiscal monitoring report included the following findings: 1) the contracts for defense services did not contain a provision for reimbursement of investigative and expert witness expenses without prior approval from the judge; and 2) monthly payments to contract attorneys were being made to some contract attorneys without the submission of a voucher by the attorney.

In this review, the monitor determined that the County had successfully addressed the first finding. The contracts for defense services now contain a provision for the reimbursement of investigative and expert witness expenses without prior approval from the judge. However, the monitor found that the second finding has not been fully addressed. According to Smith County's response to the 2013 fiscal monitoring report, attorneys must submit monthly vouchers to the court, and after approval by the court, the auditor is to receive the vouchers in order to make payment and document data required for the Indigent Defense Expenditure Report (IDER) to the Commission. The monitor found that monthly contract attorney vouchers are not regularly submitted in a timely manner, but payments are still made to these attorneys on a monthly basis. Article 26.05(c) of the Code of Criminal Procedure disallows payments until the form documenting services performed is submitted to the judge and the judge approves payment. (See Recommendation #3 below.)

## **Summary of Recommendations**

### **Recommendations Regarding Methods to Determine Indigence and Assign Counsel**

**Recommendation 1:** Magistrates in Smith County must document whether an arrestee is requesting counsel, even if the arrestee expects to make bond. Article 15.17 requires that all magistrate warnings record whether the arrestee is requesting counsel.

**Recommendation 2:** Justices-of-the-peace must report the number of persons requesting counsel as required for the Texas Judicial Council Monthly Court Activity Report.

### **Observations Regarding Operation of the Contract Defender System**

Smith County could benefit from an internal evaluation of the methods in place to ensure quality representation by contract defenders. This evaluation could include an examination of attorney workloads and attorney-client meetings. Moreover, the current caseloads of appellate contract attorneys raise concerns regarding the quality of representation being provided and may necessitate additional resources to meet the current demand for services.

### **Recommendations Regarding Methods to Capture and Report Indigent Defense Data**

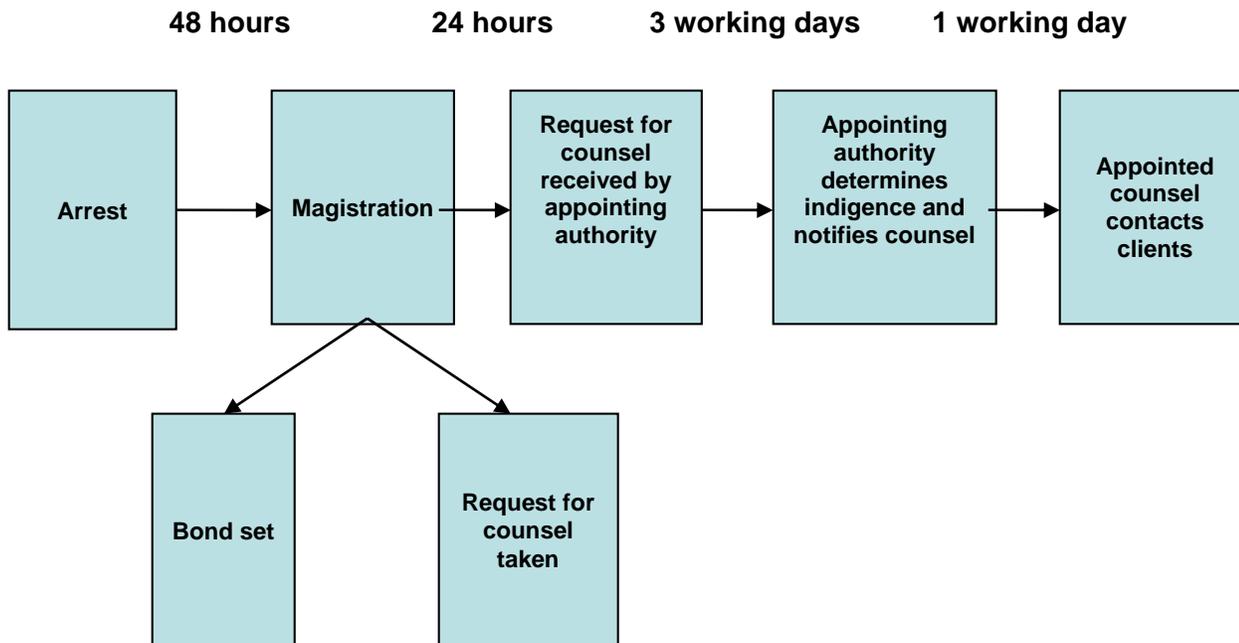
**Recommendation 3:** Attorney payments may not be made until an attorney submits an itemized voucher that is approved by the judge as required by Article 26.05(c) and Title 1 Texas Administrative Code, Section 174.25. Any payment made without an approved voucher is in contravention of Article 26.05(c).

**Recommendation 4:** All cases where an attorney's appointed representation has been completed are to be reported to the Commission as cases paid.

**Recommendation 5:** Methods must be put in place to accurately report the Indigent Defense Expense Report case total information required by Texas Government Code Section 79.036(e). Accurate reporting will necessitate a method to ensure the accuracy and completeness of the cases listed on the attorney fee vouchers.

## I. Methods to Determine Indigence and Assign Counsel

**Figure: Fair Defense Act Timeline Model for Counties with Populations Under 250,000**



### **Article 15.17 Hearings and Texas Judicial Council Monthly Court Activity Reports**

After arrest in Smith County, all persons are booked at a central jail facility within the County and receive Article 15.17 warnings from a justice-of-the-peace. The justices-of-the-peace are to determine whether probable cause is present to detain individuals, set bond, and take requests for counsel. At Article 15.17 hearings, arrestees are asked if they think they can make bail and, if not, whether they want to request counsel. Arrestees who think they can make bail are not asked if they want to request counsel. This in-court observation was confirmed in interviews with the justices-of-the-peace.

Article 15.17 requires magistrates to ask all persons at the hearing whether they want to request counsel. Article 15.17(e) of the Code of Criminal Procedure states:

*(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:*

- (1) the magistrate informing the person of the person's right to request appointment of counsel;*
- (2) the magistrate asking the person whether the person wants to request appointment of counsel; and*
- (3) whether the person requested appointment of counsel.*

Article 15.17(e) does not provide exceptions to recording whether an arrestee wants to request counsel. Under the statute, every person who is brought before the magistrate under Article 15.17(a) is to be asked whether he/she wants to request counsel, and the magistrate must make a record of informing the arrestee of the right to appointed counsel as well as a record of whether the arrestee wants to request appointed counsel.

According to some justices-of-the-peace, a majority of eligible felony arrestees request counsel at the Article 15.17 hearing but fewer misdemeanor arrestees request counsel. The monitor was unable to verify actual percentages of persons requesting counsel because most of the justices-of-the-peace did

not complete the section of the Texas Judicial Council Monthly Court Activity Reports covering requests for counsel made at the Article 15.17 hearing.

Beginning in FY12, the Office of Court Administration (OCA) began to collect additional data elements in its Texas Judicial Council Monthly Court Activity Reports. One of the new elements involved the number of persons requesting counsel at Article 15.17 hearings administered by justices-of-the-peace. During FY12, the Smith County justices-of-the-peace were unaware of this new reporting requirement, and so reported 4,391 magistrate warnings and 0 requests for counsel. In the middle of FY13, the Commission contacted the justices-of-the-peace about the matter. The judges explained that the number of persons requesting counsel is not captured in their case management system. One of the judges has since found a way to manually track and report this data element. In FY13, the justice courts reported 5,038 magistrate warnings and 93 requests for counsel (with all requests for counsel being reported by the judge who manually tracks requests).

### **Determinations of Indigence and Assignment of Counsel**

If an arrestee requests counsel at the Article 15.17 hearing, jail staff ensure that affidavits of indigence are completed. For felony arrests, affidavits are sent to a designated district judge who receives all jailed felony requests for counsel in a given week. This judge selects attorneys for indigent cases from the contract attorneys assigned to his/her court. The affidavit of indigence is returned to the magistrate within one working day, and the magistrate issues the appointment of counsel. In the event that the case is later filed in another court, this originally appointed attorney does not stay with the case, but instead, a contract defender from the court receiving the case will be appointed.

If an arrestee makes bond, the individual can request counsel at the initial appearance after a case is filed. Under current procedures, the initial appearance is the first opportunity to request counsel if the arrestee made bond. In these cases, the district judges act as the appointing authority. According to the felony court judges, about half of felony defendants request counsel at the initial appearance. When these persons request counsel in court, the courts typically want three or four outside quotes from private attorneys as proof of the person's indigence. The monitor did not examine the timeliness of rulings on requests for counsel, but Article 1.051(c) of the Code of Criminal Procedure allows three working days to rule on requests. In order for this system to meet statutory time frames, the process of obtaining quotes must fit within the three working day time frame of Article 1.051(c).

Each of the felony courts has three contract attorneys who handle almost all of the indigent cases in the court. An additional two contract attorneys handle indigent appeals. Overall, the trial-level contract defenders handle over 99% of indigent felony cases, and the appellate contract defenders handle 100% of indigent appeals. These attorneys all have private practices which are composed of cases outside of the criminal contracts.

Attorneys reported that they receive notification of appointment to a case either through fax or email. Once appointed, attorneys are expected to meet with their client within one working day. When clients remain in custody, attorneys vary on how often they make jail visits. According to the judges interviewed, they periodically receive complaints that attorneys are not promptly meeting with their clients, and when this happens, the judges contact the attorney about the matter.

Felony cases are filed promptly and move swiftly. For those persons who do not make bond, almost all cases are filed within Article 17.151 time frames of 90 days after arrest for felony cases. After case filing, courts hold an attorney status hearing (where a large percentage of attorneys are appointed). The arraignment is typically either the same day as the status hearing or a few days later. Discovery deadlines and pre-trial motion deadlines vary by court but are typically within a couple of weeks of the

status hearing. If no plea deal is reached by the pre-trial hearing following these discovery and pre-trial motion deadlines, the case is moved to the trial docket. According to FY13 data reported to OCA, 55% of felony cases within the County are disposed within 90 days of filing, and only 7% are disposed more than 365 days after filing. These times to case disposition are faster than the statewide average where 45% are disposed within 90 days of filing, and 18% are disposed more than 365 days after filing.<sup>3</sup>

**Recommendations Regarding Methods to Determine Indigence and Assign Counsel**

**Recommendation 1:** Magistrates in Smith County must document whether an arrestee is requesting counsel, even if the arrestee expects to make bond. Article 15.17 requires that all magistrate warnings record whether the arrestee is requesting counsel.

**Recommendation 2:** Justices-of-the-peace must report the number of persons requesting counsel as required for the Texas Judicial Council Monthly Court Activity Report.

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<sup>3</sup> See <http://card.txcourts.gov/ReportSelection.aspx> for Judicial Council Monthly Court Activity Reports. This report showing age of cases disposed in district courts was run on March 5, 2014 for the period from September 2012 through August 2013.

## **II. Operation of the Contract Defender System**

### **Examination of Appointed Caseloads<sup>4</sup>**

The 2013 fiscal monitoring report found that all contracts had established caseload maximums, but the report stated that the trial-level maximum caseload of 500 felonies per year was very high. In response the County amended the trial-level threshold to 300 felony cases per year. The 2013 report did not make a comment about the appellate threshold of 175, and the County did not amend this threshold.<sup>5</sup>

Last year, the 83<sup>rd</sup> Texas Legislature passed HB 1318 which directed the Commission to conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney. The study must be based on relevant policies, performance guidelines, and best practices. In conducting the study, the Commission is to consult with criminal defense attorneys, criminal defense attorney associations, the judiciary, and any other organization engaged in the development of criminal indigent defense policy that the commission considers appropriate. The study is due to be published by January 15, 2015, and should provide more specific guidance on appropriate caseloads in Texas. The scope of this study, however, does not include appropriate caseloads in appeals cases.

One set of maximum caseload guidelines which has gained national recognition was developed in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals (NAC). This committee published maximum standard caseloads for public defenders that are detailed in the Table 1.<sup>6</sup>

**Table 1: NAC Caseload Standards**

<b>Type of Case</b>	<b>Maximum caseload</b>
Felonies	150
Misdemeanors	400
Juvenile	200
Mental Health Act	200
Appeals	25

The NAC caseload standards represent the maximum number of cases recommended for a single attorney in a twelve month period. Caseloads for each category represent the recommended maximum for an attorney handling only cases in that category. For example, on average, an attorney who handles only felonies should not be assigned more than 150 felony cases annually. When an attorney handles a mixed caseload, the standard should be applied proportionally. For example, an attorney who is given 120 felonies annually is working at 80% of the caseload maximum and could not be assigned more than 80 misdemeanors (or 20% of the misdemeanor maximum).

The NAC standards are a useful point of reference in assessing caseloads but should not be considered universal standards. They may not account for administrative work, travel time, or other professional requirements that reduce the time an attorney can spend on cases. They also are limited by the differences in work required by cases within a category. For example, a case involving felony homicide may require significantly more work than a burglary case.

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<sup>4</sup> The Commission has not adopted a standard related to maximum caseloads or workloads.

<sup>5</sup> To provide another perspective to the appellate threshold, the average number of new filings per appellate justice across Texas in FY13 was 125 cases before any transfers. See Texas Judicial Council, *Annual Statistical Report for the Texas Judiciary: Fiscal Year 2013* at 32 (available at <http://www.txcourts.gov/pubs/AR2013/AR13.pdf>).

<sup>6</sup> National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

According to data submitted by the eleven contract attorneys, eight of them had an appointed caseload in FY13 in excess of the NAC guidelines.<sup>7</sup> According to interviews with contract attorneys, the contracts represent between 50% and 85% of their practices. The cases reported under their contract vouchers do not take account of each attorney’s retained criminal cases, misdemeanor appointments in the Smith County statutory county courts, appointments in other counties, child welfare appointments, or other retained civil cases. Under the NAC standard, the two appellate attorneys had especially high caseloads, with each attorney’s appointed caseload comprising the equivalent capacity of about two full-time attorneys. See Table 2 for a summary of FY13 contract attorney caseloads as listed according to the number of distinct closed cases reported on monthly vouchers by attorneys.<sup>8</sup>

**Table 2: FY13 Contract Caseloads According to Distinct Cases Listed in Monthly Vouchers<sup>9</sup>**

Attorney	Number of Months Reported by Attorney	Total Felony Cases	Total Misdemeanor Cases	Total Appellate Briefs <sup>10</sup>	Number of Attorneys Needed According to NAC Standard
John Jarvis	12	120	0	0	0.80
Oscar Loyd	12	149	8	0	1.01
Kurt Noell	12	104	7	0	0.71
Lajuanda Lacy	12	173	0	0	1.15
Brent Ratekin	11	225	0	0	1.50
Melvin Thompson	11	189	0	0	1.26
Don Davidson	12	219	6	0	1.48
Zach Davis	11	137	0	0	0.91
Clifton Roberson	12	220	1	0	1.47
James Huggler	12	17	0	43	1.83
Reeve Jackson	12	15	0	49	2.06

The two appellate attorneys expressed some challenges posed by their contract caseload. One of the attorneys said he had difficulties meeting clients; the other said he does not have time to meet in person with clients. One of the appellate attorneys felt his caseload prevented him from arguing all of the legitimate issues that could be raised and stated his caseload sometimes prevented him from giving his best effort; the other noted that in many cases he would have liked to file a reply brief, but his caseload prevented him from doing so. These two attorneys also noted difficulties filing appellate briefs in a

<sup>7</sup> This caseload analysis does not take account of the fact that not all monthly vouchers were submitted. For instance, Zach Davis had an appointed caseload under the NAC guidelines, but he did not submit his final voucher showing the cases he disposed in September.

<sup>8</sup> This analysis considers a trial level case to be a separate case from a probation revocation even though both may have the same case number. The monitor considered a closed case to be any disposition where an attorney’s representation has ended including the retention of counsel. Arguably, the misdemeanor cases could and perhaps should be reported as felony cases (the auditor has reported the cases in this manner) since they were for felony arrests. This analysis does not include four cases that were reported by both the clerk and the attorney but were transferred to other courts.

<sup>9</sup> Case totals are based on counts determined by the monitor (not the auditor) in the review of attorney vouchers. These totals do not include late FY13 voucher submittals.

<sup>10</sup> This column captures the number of appellate briefs submitted rather than the number of appellate cases. Multiple cases may be associated with a single brief. For maximum caseload purposes, the number of briefs submitted is a more consistent measure than the number of appellate cases.

timely fashion. For instance, the attorneys noted that it was not uncommon to have three or four briefs due in a week, and it was almost guaranteed that at least one extension would have to be filed. In fact, one of the attorneys had been held in contempt by the 12<sup>th</sup> Court of Appeals because of an untimely brief.

In order to corroborate these statements by the appellate attorneys, the monitor requested a query of the TAMES database showing cases for the two attorneys in the 12<sup>th</sup> Court of Appeals.<sup>11</sup> The query returned a total of 100 cases with appellate events occurring in FY13. Of the 100 cases queried, 70 included at least one request for an extension of time to file the appellate brief. A total of 21 cases contained notices of late docketing statements.<sup>12</sup> The fact that attorneys seem to have trouble completing administrative tasks such as filing docketing statements may indicate that the attorneys are also having trouble completing more substantive aspects of their representation.

In order to consider appellate workloads in a broader context, the monitor compared the workloads of other appellate defense attorneys in Texas with the Smith County contract attorneys. Bexar, Dallas, and Harris Counties each have public defender offices with appellate divisions. In FY13, the average number of briefs filed by attorneys in these offices ranged from approximately 23 per attorney in Bexar County to approximately 31 per attorney in Dallas.<sup>13</sup> The appellate attorneys in Smith County have much higher workloads than the appellate attorneys in the public defender offices. The workload difference shown by this analysis actually understates the difference, since attorneys in the public defender offices work exclusively on indigent appellate cases, while the contract attorneys have outside practices. The public defender attorneys also have the benefit of support staff in their offices, allowing attorneys to focus exclusively on legal work.

The monitor estimated the average number of hours available to the two appellate attorneys per brief submitted. These averages do not necessarily reflect the average time spent preparing briefs because an appellate practice involves tasks other than preparing briefs. If one assumes there are 2,000 working hours in a year (50 work weeks at 40 hours per week), then one can divide these hours by the number of briefs submitted and get a rough estimate the total working hours spent on the appellate contract for purposes of comparison with other appellate defenders in Texas. (This estimate is intended to highlight relative differences in hours spent by appellate attorneys; however it does not include consideration of several variables that affect the total working hours in one year, such as sick time, holidays, etc. Actual time per brief may be considerably lower once these variables are factored; however the magnitude of the differences among appellate programs would be essentially the same.)

The first appellate attorney stated that the contract makes up about 70% of his practice, and he submitted 49 briefs in FY13. This corresponds to about 29 hours per brief submitted. The second attorney stated that the contract makes up about 50% of his practice, and he submitted 43 briefs in FY13. This corresponds to 23 hours per brief submitted. Using this same method of analysis, appellate attorneys in the Bexar and Harris County Public Defender Offices had an average of at least 80 hours available per

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<sup>11</sup> The two attorneys have additional cases before other courts of appeal. This query was made on March 12, 2014 by Bill Carlson of OCA.

<sup>12</sup> A docketing statement is an electronic summary of relevant case details that is used for administrative purposes and is to be submitted after an appeal is perfected.

<sup>13</sup> TIDC staff inquired about the workloads of these three offices and found that the offices track workloads according to the number of briefs filed in a given year. Reported totals exclude:

- Additional cases handled by the attorneys where the defendant has no right of appeal or the appellate court has no jurisdiction; and
- Writ responses filed.

brief. See Table 3 for a summary of average appellate workloads for the public defender offices and for Smith County contract attorneys.<sup>14</sup>

**Table 3: Average Appellate Workloads of Public Defenders and Contract Attorneys**  
 (These workloads are constructed estimates and are **not** based on actual time recorded. The hours listed highlight relative differences and not actual hours devoted to briefs.)

Appellate Attorneys	FY13 - Average Number of Briefs per Attorney	FY13 – Estimated Appellate Hours in a Year Divided by Briefs Filed <sup>15</sup>
Bexar Public Defenders	23	~87
Dallas Public Defenders	31	~65
Harris Public Defenders	25	~80
Smith Contract Defenders	46	~26

The Fair Defense Act requires that courts are to adopt countywide procedures for timely and fairly appointing counsel in their indigent defense plans.<sup>16</sup> The plans must include details regarding local practices for maintaining the indigent defense system and must ensure procedures for quality control are in place. Article 26.04(b)(5) of the Code of Criminal Procedure states:

*(b) Procedures adopted under Subsection (a) shall:*

*(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics;*

The reports of unmanageable workloads by appellate attorneys combined with the analysis showing substantially fewer hours per brief than other appellate defender programs may be an indication that local procedures are not ensuring the provisions listed in Article 26.04(b)(5). Smith County should consider conducting an investigation into appropriate workload standards. After reviewing the workloads of appellate attorneys and the ability of the attorneys to provide effective representation, the County may wish to provide an additional attorney to handle indigent appeals.

### **Case Outcomes of Trial-level Contract Defenders**

With respect to the trial-level contract defenders, attorneys did not unanimously voice problems about their caseloads. However, their caseloads raise a question as to whether attorneys can maintain a high level of representation with their combined private practices and contract caseloads. The monitor examined FY13 case outcomes of contract counsel found in the district clerk’s electronic records and contrasted these outcomes with retained counsel.<sup>17</sup> Under this analysis, about 55% of defendants

<sup>14</sup> The workload measure (based on the number of briefs filed in a given year) is different than a caseload standard as some briefs may involve multiple cases. By counting briefs rather than cases, the offices are able to provide a more consistent workload measure than the number of appellate cases. The Bexar County Public Defender Office and the Harris County Public Defender Office maintain a maximum workload standard of 25 briefs per attorney in a given year.

<sup>15</sup> These figures are based on a rough estimate of 2000 work hours per year. For Smith County attorneys, the number of hours devoted to appeals was found by multiplying 2000 hours by the estimated percent of time devoted to the contract. For public defenders, the number of hours devoted to appeals was assumed to be 2000 per year. These averages do not necessarily reflect the average time spent preparing briefs because an appellate practice involves tasks other than preparing briefs.

<sup>16</sup> Tex. Code Crim. Proc. art. 26.04(a).

<sup>17</sup> The monitor obtained data for retained counsel dispositions by taking aggregate reports of all Smith County felony dispositions as found in the district clerk’s reports to OCA and then subtracting dispositions obtained by contract attorneys from the aggregate totals. The result is a very close approximation to the dispositions obtained by non-contract attorneys (retained counsel). In a few cases, the contract defender represented a defendant, but the clerk’s records do not show this

represented by contract counsel received a guilty verdict compared to 40% for retained counsel. Similarly, about 6% of defendants represented by contract counsel received some form of dismissal as compared to 16% for retained counsel. Factors other than counsel type, such as the ability to make bond, may impact case outcomes. This analysis only examined outcome type and does not take account of the length of sentences obtained or the type of dismissals obtained. In short, retained counsel obtained much better outcomes for their clients than contract counsel. While this comparison may illuminate some aspects of representation, outcomes alone are not a definitive indicator of levels of performance. See Table 4 for the outcome comparison.

**Table 4: Comparison of Case Outcomes by Contract Defenders and Retained Counsel<sup>18</sup>**

	Total Trial-Level Felony Dispositions (all cases as reported to OCA)	Percent (all cases)	Contract Attorney Dispositions (as reported on district clerk's website)	Percent (contract attorneys)	Difference (Retained Counsel)	Percent (OCA reports less contract attorneys' cases)
Guilty Verdict	1,137	48.6%	743	55.4%	394	39.5%
Deferred Adjudication	351	15.0%	185	13.8%	166	16.6%
Revocation Granted	447	19.1%	271	20.2%	176	17.6%
Revocation Denied	71	3.0%	59	4.4%	12	1.2%
Acquittal	1	0.0%	0	0.0%	1	0.1%
Dismissal	239	10.2%	79	5.9%	160	16.0%
Other	93	4.0%	4	0.3%	89	8.9%
Total Dispositions	2,339	100.0%	1,341	100.0%	998	100.0%

### Use of Support Services<sup>19</sup>

In order to provide a high level of representation to defendants, attorneys may need to make use of support services such as investigators and expert witnesses. According to interviews with contract attorneys, judges are very amenable to approving requested support services. Based on data provided by the auditor's office, \$46,050 of investigative expenses were incurred in 91 felony cases in FY13, and \$65,896 of expert witness expenses were incurred in 37 felony cases. The monitor examined the use of these support services in two contexts: a comparison with support service spending with the rest of Texas and a comparison with nationally recognized guidelines for the use of investigators. Smith County's proportion of total indigent defense spending used for support services is greater than the proportion spent statewide, but the amount is less than is recommended by the national guidelines.

In FY13 investigative spending composed 5.6% of Smith County's non-capital felony indigent defense expenses; statewide this percentage was 3.5%. Spending on expert witness expenses composed

(e.g. in cases in which an appeal was filed). In a few other cases, assigned counsel (non-contract attorneys) represented defendants.

<sup>18</sup> The period of analysis was October 2012-September 2013.

<sup>19</sup> The Commission has not adopted a standard related to expected use of support services such as investigators or expert witnesses.

8.0% of Smith County's non-capital felony expenses; statewide this percentage was 4.2%.<sup>20</sup> These figures indicate that Smith County places a high emphasis on providing investigative and expert witness services to indigent defendants.

In comparison with nationally recognized guidelines, however, Smith County spends less on investigative expenses than is advised by national guidelines. The National Study Commission on Defense Services (NSC) developed a standard for investigative expenses<sup>21</sup> calling for: one full time investigator for every 450 felony cases; one full time investigator for every 1200 misdemeanor cases; and, one full time investigator for every 600 juvenile cases. This level of use would have required 3.4 full-time investigators for felony indigent defense cases in FY13, and appears to be greater than the amount spent on investigative services in Smith County.

While all attorneys thought that Smith County judges regularly approved necessary expenses, some believed a support person dedicated to serving contract attorneys could be helpful. For instance, a dedicated process server/investigator could expedite access to critical information. Smith County courts follow a brisk schedule for moving cases, and this can mean that an attorney may be appointed at the attorney status hearing with a discovery deadline set three days later, and a pre-trial motion filing deadline set one week after the attorney status hearing. If the schedule is maintained, and the defense attorney would like to issue a subpoena, relevant persons are not likely to be served before the pre-trial motion deadline if the defense attorney relies on a constable to serve process.

### **Attorney-Client Meetings**

Article 26.04(j)(1) requires attorneys to:

(1) *make every reasonable effort to contact the defendant not later than 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;*

If an attorney is to follow the court case disposition schedules, a strategy of the case must be quickly developed. This strategy would obviously necessitate meetings with the client so that crucial items for discovery can be obtained. Attorneys said they had difficulty meeting clients when they were transferred to other counties and when clients made bond. As for jail visits, attorneys voiced some concerns over the fact that private meeting areas were not available at the jails.<sup>22</sup>

The monitor inquired about attorney visits to the jail and examined jail logs into both the high risk jail and the low risk jail.<sup>23</sup> These logs indicated that the nine trial-level contract attorneys varied substantially in how often they visited the jail. Between February 22, 2013 and June 10, 2013, the contract attorney that was the most frequent visitor to the high risk jail, averaged making visits every 4.5 days. The least frequent visitor averaged making visits every 10.5 days. As for the low risk jail, the monitor could not determine the times between visits, but found the number of visits made by attorneys varied greatly between attorneys.

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<sup>20</sup> The statewide percentages include assigned counsel and contract counsel systems but exclude public defender and managed assigned counsel systems.

<sup>21</sup> National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, Guideline 4.1 (1976). These caseloads are based on caseload standards for attorneys set out in the National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973). According to the NSC standard, there should be one full-time investigator for every three attorneys.

<sup>22</sup> The high risk jail is undergoing construction, and private meeting areas will be available when the construction is complete.

<sup>23</sup> The high risk jail logs covered the period from February 22, 2013 to June 10, 2013. The low risk jail logs appeared to cover June and July 2013.

### **Observations Regarding Operation of the Contract Defender System**

Smith County could benefit from an internal evaluation of the methods in place to ensure quality representation by contract defenders. This evaluation could include an examination of attorney workloads and attorney-client meetings. Moreover, the current caseloads of appellate contract attorneys raise concerns regarding the quality of representation being provided and may necessitate additional resources to meet the current demand for services.

### **III. Methods to Capture and Report Indigent Defense Data**

In her 2013 report, the fiscal monitor found that contract attorneys may receive payment for services even though no voucher had yet been submitted to and approved by the judge. Contract attorneys must submit to the court monthly vouchers showing the cases disposed as part of the contract.<sup>24</sup> If the court approves the voucher, under Article 26.05(c) of the Code of Criminal Procedure, the attorney may be paid, and the voucher is forwarded to the auditor's office. The information on the voucher is used by the auditor's office for its annual expenditure report to the Commission. Smith County responded to the fiscal monitoring report and stated:

*Vouchers are checked by the auditor's office for the following:*

- a) Signature of the judge*
- b) Name of the attorney*
- c) Signature of the attorney and date*
- d) Defendant's name*
- e) Case type*
- f) Cause number should include the court*
- g) Dollar amount*

*If all information listed is provided, the auditor's office will send the vouchers through the accounts payable process. Vouchers that do not have this information provided will be sent back to the respective court for completion.*

In this current review, the monitor found that Smith County has not yet resolved the voucher submittal issue. In FY13, three of the contract attorneys did not submit all of their monthly vouchers, and yet received all of their monthly payments in a timely fashion. Article 26.05(c) states:

*. . . No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. . . .*

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<sup>24</sup> 1 Tex. Admin. Code § 174.25:

*The contract shall set the amount of compensation to be paid to the contractor and the designated method and timing of payment. The contract shall state that the contractor shall be required to submit an itemized fee voucher. The voucher must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for approval and payment. The contract shall also specify how a contractor is to be compensated for cases assigned but not disposed within the term of the contract as provided in §174.19 of this subchapter.*

See Table 5 for the number of months for which each contract attorney reported their cases disposed in FY13.<sup>25</sup>

**Table 5: Monthly Vouchers Submitted by Attorneys in FY13**

Attorney	Number of Months Reported by Attorney	Amount Paid
John Jarvis	12	\$78,000
Oscar Loyd	12	\$78,000
Kurt Noell	12	\$78,000
Lajuanda Lacy	12	\$78,000
<b>Brent Ratekin</b>	<b>11</b>	<b>\$78,000</b>
<b>Melvin Thompson</b>	<b>11</b>	<b>\$78,000</b>
Don Davidson	12	\$78,000
<b>Zach Davis</b>	<b>11</b>	<b>\$78,000</b>
Clifton Roberson	12	\$78,000
James Huggler	12	\$78,000
Reeve Jackson	12	\$78,000

**Trial-level IDER Case Reports: Vouchers Compared to Electronic District Clerk Records**

The monitor was concerned that late voucher submissions might be a sign of record keeping not supporting correct data in the Indigent Defense Expenditure Report (counties must submit this report to the Commission per Texas Government Code Section 79.036(e)). In an attempt to document the accuracy of monthly vouchers, the monitor compared voucher submissions for the trial-level contract attorneys with electronic data from the district clerk’s files. The district clerk’s data is limited by the following facts:

- the district clerk’s data only includes filed cases;
- if multiple attorneys represented a defendant, only the last attorney is listed in the electronic record; and
- attorney representation of defendants having status hearings with respect to their probation are not reflected in the electronic record.

Because of these limitations, one would expect several cases to be reported by attorneys which are not reported by the district clerk. If attorney reporting is accurate, however, there should be very few cases reported by the clerk and not by attorneys.

Cases in which the district clerk listed the respective attorney for a case but the attorney did not report it composed about 10% of the total cases reported by attorneys on their monthly vouchers. Overall, the district clerk’s records and attorney vouchers match in about 72% of applicable cases. Reasons for mismatching cases include: 1) cases in which multiple attorneys represented a defendant only showed one attorney on the electronic record; 2) some courts made extensive use of status hearings in probation cases and attorney vouchers did not always identify status hearing cases; and 3) some attorneys did not submit all of their monthly vouchers showing the cases they disposed. See Table 6 which shows case totals as reported by attorneys and matches these case totals with those listed in district clerk case files.

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<sup>25</sup> At least one of those attorneys who did not immediately report September 2013 case totals did so in a later month, but after payment had been made.

**Table 6: Comparison of FY13 Attorney Vouchers to District Clerk Files**

Attorney	Court	Unfiled Cases Reported by Attorney	Cases Matching Clerk and Attorney Records	Cases Reported by Attorney but not by Clerk	Cases Reported by Clerk but not by Attorney	Percent Matching <sup>26</sup>
John Jarvis	107 <sup>th</sup> District Court	0	112	8	5	89.6%
Oscar Loyd	107 <sup>th</sup> District Court	0	110	45	10	66.7%
Kurt Noell	107 <sup>th</sup> District Court	0	99	5	8	88.4%
Lajuanda Lacy	114 <sup>th</sup> District Court	2	117	55	45	53.9%
Brent Ratekin	114 <sup>th</sup> District Court	9	161	54	35	64.4%
Melvin Thompson	114 <sup>th</sup> District Court	3	124	61	21	60.2%
Don Davidson	241 <sup>st</sup> District Court	15	172	32	11	80.0%
Zach Davis	241 <sup>st</sup> District Court	0	123	15	10	83.1%
Clifton Roberson	241 <sup>st</sup> District Court	26	167	26	15	80.3%
Total		55	1,185	301	160	72.0%

**Trial-level IDER Case Reports: Vouchers Compared to Auditor Reports**

The monitor next compared case totals reported on contract vouchers with totals reported to the Commission by the auditor’s office. The total number of cases disposed as found by the monitor on the vouchers was close to the total reported by the auditor, but the auditor appeared to count cases in a slightly different manner than the monitor. The first difference in case counting resulted from the fact that each month attorneys report the cases they disposed for purposes of their representation, but not necessarily for purposes of case resolution. The auditor did not report the cases where a case resolution was still pending but where the attorney’s representation had been completed. For example, if a case was disposed by trial counsel but was being appealed with appellate counsel, the auditor reported the trial-level case on the IDER.

All cases where an attorney’s appointed representation has been completed are to be reported to the Commission as cases paid. The Commission’s *Procedure Manual for the Indigent Defense Expenditure Report* instructions begins by stating, “The report captures the amount of money spent by counties for indigent defense, as well as the number of cases that are associated with those dollars”. Since one of the purposes of the IDER is to report cases for which attorneys are paid, the best method of reporting is to include all appointed cases where an attorney’s representation has been completed.

The second difference in case counting resulted from the fact that several vouchers contained duplicate case numbers. Some of these duplicates occurred because an attorney might dispose of a case

<sup>26</sup> In determining the percent of cases that match records, the monitor divided the number of matching cases by the sum of matching cases and un-matching cases. In arriving at this percentage, the monitor excluded misdemeanor cases and unfiled cases.

and then later represent the same defendant on a motion to revoke probation. The auditor’s office correctly treats these as separate cases. In some instances, however, attorneys reported the same case as reaching a plea bargain in different months. The monitor did not count these cases separately as the monitor believes this is the result of errors in record keeping by contract attorneys. See Table 7 which shows case totals reported on attorney vouchers and totals reported by the auditor on the IDER.

**Table 7: Comparison of Attorney Vouchers to Auditor Reports<sup>27</sup>**

Attorney	Total Felony Cases on Attorney Vouchers	Total Misdemeanor Cases on Attorney Vouchers <sup>28</sup>	Total Felony Cases Reported by Auditor	Total Misdemeanor Cases Reported by Auditor
John Jarvis	120	0	111	0
Oscar Loyd	149	8	157	0
Kurt Noell	104	7	107	0
Lajuanda Lacy	173	0	183	0
Brent Ratekin	225	0	233	0
Melvin Thompson	189	0	185	0
Don Davidson	219	6	199	0
Zach Davis	137	0	135	0
Clifton Roberson	220	1	184	0
Total	1,536	22	1,494	0

### Appellate IDER Case Reports

Section 79.036(e) of the Texas Government Code requires counties to report to the Commission the number of indigent appeals cases each year. Many county financial officers have difficulty distinguishing appeals cases from probation revocation cases because both types of cases may be identified with the initial trial-level case number. To address this confusion, the Commission’s *Procedure Manual for the Indigent Defense Expenditure Report* states how felony appeals should be counted:

***Felony Appeals** – Cases where the attorney fee vouchers reveal that the cases paid result from the filing of an appeal or post-conviction action (i.e. direct appeals and writ of habeas corpus). This relates to adult felony expenses only. Do not include motions to revoke probation.*

These instructions are not intended to disallow financial officers from reporting appeals of motions to revoke probation, but rather to ensure there is no confusion in identifying an appellate case.

The monitor compared monthly vouchers from appellate attorneys with case totals reported by the auditor’s office. The auditor counts appeals based on whether the case has been disposed as opposed to whether a brief has been filed. The monitor is not making a recommendation as to the local method for reporting appeals cases, but if appeals are reported in the year that the brief is filed, one can obtain a more accurate view of appellate casework than if appeals are reported in the year they are disposed.<sup>29</sup> This is because an attorney’s work will generally be completed upon submission of the brief, but the

<sup>27</sup> These totals by court include misdemeanor cases disposed as part of the contract.

<sup>28</sup> These misdemeanor cases were either for a felony arrest or were in connection with a felony arrest. Attorneys reported them as misdemeanors because they were disposed as misdemeanors. Arguably they should be counted as felony cases on the IDER, and the auditor reported them in this way.

<sup>29</sup> The Commission requires public defender offices to report appeals cases based upon the date the brief is filed.

case disposition may not occur until much later. In Table 8, one can see that the differing reporting methods yield different appeals case totals.<sup>30</sup>

**Table 8: Comparison of Appellate Attorney Vouchers to Auditor Reports**

Attorney	Total Cases According to Year of Brief Filing <sup>31</sup>	Total Appeals Reported by Auditor
James Huggler	49	34
Reeve Jackson	63	56

**Recommendations Regarding Methods to Capture and Report Indigent Defense Data**

**Recommendation 3:** Attorney payments may not be made until an attorney submits an itemized voucher that is approved by the judge as required by Article 26.05(c) and Title 1 Texas Administrative Code, Section 174.25. Any payment made without an approved voucher is in contravention of Article 26.05(c).

**Recommendation 4:** All cases where an attorney’s appointed representation has been completed are to be reported to the Commission as cases paid.

**Recommendation 5:** Methods must be put in place to accurately report the Indigent Defense Expense Report case total information required by Texas Government Code Section 79.036(e). Accurate reporting will necessitate a method to ensure the accuracy and completeness of the cases listed on the attorney fee vouchers.

**Conclusion**

The monitor appreciated the professionalism and assistance provided by Smith County officials and staff during this review. Smith County officials are clearly committed to operating an effective justice system and appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, the Commission will monitor the County’s transition and process improvements regarding the report’s findings.

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<sup>30</sup> As a reference point, according to a TAMES database query, James Huggler filed 59 appeals in FY13 and Reeve Jackson filed 64 appeals. If data reports deviate far from the number of cases filed, the report is probably not an accurate reflection of the attorney’s workload.

<sup>31</sup> For James Huggler, the dates of filed briefs were listed on the monthly vouchers. For Reeve Jackson, this was found through TAMES queries. The monitor did not count cases where some appellate work was done, a case was closed, but no brief was filed. Arguably, one could count these cases in the IDER.

## Appendix A: Summary of Indigent Defense Statistics

Table: Indigent Defense Statistics for Smith County<sup>32</sup>

Smith County	2001 Baseline	2010	2011	2012	2013	Texas 2013
Population Estimate	178,119	209,714	209,714	215,085	217,387	26,251,278
Felony Cases Paid		1,913	1,480	1,522	1,512	192,045
Felony Cases Added		2,521	2,321	1,846	2,202	272,990
Felony Appointment Rate		75.9%	63.8%	82.5%	68.7%	70.4%
Felony Attorney Fees		\$899,838	\$764,397	\$916,317	\$786,190	\$96,567,898
Total Felony Expenditures		\$1,316,047	\$1,091,974	\$1,356,932	\$1,065,408	\$109,898,236
Misdemeanor Cases Paid		607	472	454	445	228,357
Misdemeanor Cases Added		6,133	5,313	5,203	5,166	549,030
Misdemeanor Appointment Rate		9.9%	8.9%	8.7%	8.6%	41.6%
Misdemeanor Attorney Fees		\$146,601	\$138,554	\$143,005	\$127,246	\$36,880,978
Total Misdemeanor Expenditures		\$153,202	\$146,693	\$150,530	\$138,558	\$37,705,538
Juvenile Cases Paid		492	375	381	359	48,114
Juvenile Cases Added		336	284	277	357	33,504
Juvenile Attorney Fees		\$66,121	\$43,955	\$46,926	\$53,520	\$10,468,296
Total Juvenile Expenditures		\$73,740	\$50,554	\$46,926	\$53,520	\$11,196,726
Total Attorney Fees	\$608,987	\$1,268,559	\$1,102,906	\$1,262,248	\$1,120,255	\$149,496,691
Total ID Expenditures	\$855,337	\$1,826,970	\$1,575,283	\$1,710,388	\$1,685,479	\$217,068,685
Total ID Expenditures per Population	\$4.80	\$8.71	\$7.51	\$7.95	\$7.75	\$8.27
Formula-Based Grant Disbursements		\$164,845	\$217,233	\$94,950	\$166,899	\$19,883,998
Recoupment of Fees from Defendants		\$106,199	\$64,391	\$54,655	\$62,748	\$12,321,042

<sup>32</sup> This table does not include the Commission's award of an extraordinary grant to Smith County in FY13 for \$100,000.

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## **Appendix B: Sample Trial-level Felony Defender Contract**

**CONTRACT FOR LEGAL SERVICES  
FOR INDIGENT CRIMINAL DEFENDANTS**

This Contract is authorized by Texas Code of Criminal Procedure 26.04 and the Texas Administrative Code Title 1, Part 8, chapter 174, and is made by and between the parties identified below for the purpose of providing legal services to indigent defendants in the criminal courts of Smith County, Texas.

NOW THEREFORE, the Parties agree as follows:

1. Parties. The Parties are the Appointing Authority, Contracting Authority, and Contractor.
2. Appointing Authority shall mean the Honorable Judge of the 7th Judicial District Court of Smith County, who has authority to establish an indigent defense plan and approve attorneys to represent indigent defendants in criminal cases under Article 26.04, Code of Criminal Procedure.
3. Contracting Authority shall mean Smith County, Texas, acting by and through its duly elected County Judge and Commissioners Court.
4. Attorney shall mean \_\_\_\_\_.
5. Term. The term of this contract shall be for ten months beginning on October 1, 2013 and ending on September 30, 2014, unless sooner terminated as set forth herein.
6. Compensation. Attorney will receive the sum of Six Thousand Five Hundred and no/100 Dollars (\$6,500.00) per month, for a total of Seventy-Eight Thousand and no/100 Dollars (\$78,000.00) for the term of the contract, unless the Contract is terminated sooner.
7. Attorney Qualifications. By signing this Contract, Attorney represents to the Appointing Authority that he or she meets the following minimum qualifications:
  - a. maintains the minimum qualifications to practice law in the State of Texas and will immediately inform the Appointing Authority of any change in status with the State Bar of Texas;
  - b. is familiar with the Texas Penal Code, the Texas Code of Criminal Procedure, the Texas Rules of Evidence, Texas Disciplinary Rules of Professional Conduct, Texas case law and the local rules of practice for the criminal courts of Smith County, Texas;
  - c. consistently demonstrates commitment to providing effective assistance of counsel and quality representation to criminal defendants;
  - d. consistently demonstrates professionalism, proficiency, and reliability in representing criminal defendants, and in dealing with the courts and opposing counsel;
  - e. is of sound mind, as well as good moral and ethical character;

- f. has not been sanctioned by a court for failure to appear;
  - g. has not been sanctioned by a court for any type of unprofessional conduct or abusive conduct;
  - h. maintains his or her principal office in Smith County (a principal office is the commercial location where the attorney conducts the majority of his or her criminal law practice, and does not include a post office address);
  - i. maintain a secretary, receptionist, answering service or daily monitored answering machine or voice mail system at his or her principal Smith County office;
  - j. maintain a current listing in the Tyler, Texas telephone book and/or in directory assistance;
  - k. maintain a functioning fax machine on a dedicated telephone line or an e-mail address, available 24 hours a day and monitored on a daily basis; and
  - l. file with the Appointing Authority a complete, accurate sworn "Application for Felony Court-Appointments," including all required attachments.
8. Caseload. Attorney may handle up to a maximum of 300 cases, including felonies and applications to revoke probation or proceed to final adjudication in felony cases, per year. If Attorney is appointed to 300 cases in any contract term, Attorney shall be required to notify the Appointing Authority immediately so that Attorney will not receive further appointments. This Contract shall include appointments for representation in First, Second, Third, and State Jail Felonies, but shall not include appointment for representation in capital felonies.
9. Compensation for Expenses. Counsel appointed to represent indigent defendants shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts without prior court approval [and same shall be reimbursed in accordance with Article 26.05(d) and Article 26.052(h) of the Texas Code of Criminal Procedure]. Expenses incurred with prior court approval shall be reimbursed in accordance with Article 26.05(d) and Article 26.052(f) and (g) of the Texas Code of Criminal Procedure] according to the following procedures:
- a. Procedure for Prior Court Approval of Expenses. Appointed counsel shall file with the court a pretrial request for advance payment of investigative and/or expert witness expenses to investigate potential defenses. In the discretion of the attorney, this request may be filed as an ex parte confidential request.
  - b. The request for approval of expenses must state the type of investigation to be conducted or the type of expert witness to be retained, must set out specific facts that suggest the investigation will result in admissible evidence or that the services of an expert witness are reasonably necessary to assist in the preparation of a potential defense, and shall include an itemized list of anticipated expenses for each investigator and/or expert witness. The judge shall grant the request for payment of expenses in whole or in part as far as the request is reasonable. If the judge denies the request in whole or in part, the judge shall state the reason for the denial in writing, attach the denial to the request, and submit the request and denial as a sealed exhibit to the record.
10. Independent Contractor. Attorney is not an employee of the Contracting Authority or the Appointing Authority. At most, Attorney is an independent contractor who shall complete

the requirements of this Contract by Attorney's own means and methods of work, and in accordance with the Attorney's professional legal judgment, which shall be in the exclusive charge and control of the Attorney, and is not subject to control or supervision of the Appointing Authority or the Contracting Authority, except as specified in this Contract. ANY DEFENDANT IS THE CLIENT OF THE ATTORNEY - NOT THE CLIENT OF EITHER THE CONTRACTING AUTHORITY OR THE APPOINTING AUTHORITY. IT IS THE DUTY OF THE ATTORNEY AT ALL TIMES TO PROVIDE COMPETENT, ZEALOUS LEGAL SERVICES TO EACH CLIENT IN ACCORDANCE WITH RESPONSIBILITIES UNDER TEXAS LAW, INCLUDING BUT NOT LIMITED TO THE TEXAS CODE OF CRIMINAL PROCEDURE AND THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.

11. Standard of Performance. Attorney shall, for the consideration expressed above, provide legal services to each person for whom he or she is appointed, as follows:
  - a. Provide quality, effective, competent, zealous legal representation to all clients in a professional, skilled manner consistent with the attorney's responsibilities under the Texas Disciplinary Rules of Professional Conduct, the Texas Code of Criminal Procedure, and all applicable laws.
  - b. Make every reasonable effort to contact any court-appointed client not later than 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.
  - c. Ensure continuity of representation of the client unless relieved or replaced in accordance with Texas Code of Criminal Procedure article 26.04(j)(2).
  - d. Attorney shall not assign, subcontract, or delegate any part of the services to be provided by the Attorney under this Contract.
  - e. Attorney shall not accept any payments from a client or third-party for legal services provided in a case assigned under this Contract.
  - f. Attorney shall not release confidential attorney-client information or work product related to any case assigned under this Contract, except when authorized by the Texas Disciplinary Rule of Professional Conduct.
  - g. Attorney shall not represent any defendant when to do so would create a conflict of interest. In the event of a conflict of interest, Attorney shall present evidence to the Appointing Authority, and if so ordered, be allowed to withdraw from representation of that defendant.
  
12. Continuing Requirements. In addition to the foregoing qualifications and performance standards, Attorney shall:
  - a. Submit a monthly report to be approved by the Appointing Authority, in accordance with Texas Code of Criminal Procedure 26.05. The report must include the number of cases disposed of in the previous month and the types of cases as well as the number of cases currently open and assigned by the courts.
  
  - b. Maintain the minimum qualifications to practice law in the State of Texas and must immediately inform the Appointing Authority of any change in the status of the

Attorney's law license. Upon request, Attorney shall provide Appointing Authority with proof of licensure in good standing.

13. Termination of Contract. This Contract may be terminated by the Appointing Authority for good cause, including but not limited to the following:
  - a. Appointing Authority may terminate this Contract if Attorney closes his active office for the practice of law in Smith County, Texas.
  - b. Appointing Authority may terminate this Contract if Attorney fails to perform the duties set forth in this Contract. Such failure shall be supported by judicial findings of that failure.
  - c. Attorney may terminate this Contract if Contracting Authority fails to make timely payments as specified herein.
  - d. Attorney may terminate this Contract if, for reasons beyond the control of Attorney, Attorney is unable to perform the duties required hereunder.
  - e. The Appointing Authority and Attorney may mutually terminate the Contract for force majeure or any change in the applicable or authorizing law, which renders the Contract moot.
14. Effect of Termination Upon the Attorney-Client Relationship. The attorney-client relationship commences upon the appointment of Attorney to represent any person under this Contract. In the event of termination of the Contract, the attorney-client relationship shall continue until the conclusion of the matter for which Attorney was appointed. Appointing Authority, Contracting Authority, and Attorney agree that compensation paid during the term of the Contract shall be adequate consideration for all services to be performed pursuant to the Contract, including the conclusion of any representation described in this paragraph. In the event that Attorney is no longer able or is legally not qualified to conclude such matter, the Appointing Authority shall consider whether the client remains indigent, and if so, make such other appointment as may be necessary to provide effective legal representation for the indigent person.
15. Disputes. Venue of any dispute arising under or with regard to this Contract shall be in a court of competent jurisdiction in Smith County, Texas.
16. Providing false information in an application for appointment under this Contract shall be grounds for immediate termination of the Contract.
17. Falsification of any report, billing documentation or other submission by the Attorney will be grounds for immediate termination of the Contract. In addition, such actions may subject the Attorney to professional discipline and/or criminal prosecution.

---

Honorable Judge Joel Baker

Date

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C:\Users\dlangston\AppData\Local\Microsoft\Windows\Temporary  
Files\Content.Outlook\Y4KQ5CB8\indigentkt.wpd

Internet

## **Appendix C: Sample Appellate Defender Contract**

**CONTRACT FOR LEGAL SERVICES  
FOR INDIGENT CRIMINAL DEFENDANTS  
[for Appellate Matters]**

This Contract is authorized by Texas Code of Criminal Procedure 26.04 and the Texas Administrative Code Title 1, Part 8, chapter 174, and is made by and between the parties identified below for the purpose of providing legal services to indigent defendants in the criminal courts of Smith County, Texas.

NOW THEREFORE, the Parties agree as follows:

1. Parties. The Parties are the Appointing Authority, Contracting Authority, and Contractor.
2. Appointing Authority shall mean the Honorable Judges of the 7<sup>th</sup>; 114<sup>th</sup>; and 241<sup>st</sup> Judicial District Courts of Smith County, who have authority to establish an indigent defense plan and approve attorneys to represent indigent defendants in criminal cases under Article 26.04, Code of Criminal Procedure.
3. Contracting Authority shall mean Smith County, Texas, acting by and through its duly elected County Judge and Commissioners Court.
4. Attorney shall mean \_\_\_\_\_.
5. Term. The term of this contract shall be for ten months beginning on October 1, 2012 and ending on September 30, 2013, unless sooner terminated as set forth herein.
6. Compensation. Attorney will receive the sum of Six Thousand Five Hundred and no/100 Dollars (\$6,500.00) per month, for a total of Seventy-Eight Thousand and no/100 Dollars (\$78,000.00) for the term of the contract, unless the Contract is terminated sooner.
7. Attorney Qualifications. By signing this Contract, Attorney represents to the Appointing Authority that he or she meets the following minimum qualifications:
  - a. maintains the minimum qualifications to practice law in the State of Texas and will immediately inform the Appointing Authority of any change in status with the State Bar of Texas;
  - b. is familiar with the Texas Penal Code, the Texas Code of Criminal Procedure, the Texas Rules of Evidence, Texas Disciplinary Rules of Professional Conduct, Texas case law and the local rules of practice for the criminal courts of Smith County, Texas;
  - c. consistently demonstrates commitment to providing effective assistance of counsel and quality representation to criminal defendants;
  - d. consistently demonstrates professionalism, proficiency, and reliability in representing criminal defendants, and in dealing with the courts and opposing counsel;

- e. is of sound mind, as well as good moral and ethical character;
  - f. has not been sanctioned by a court for failure to appear;
  - g. has not been sanctioned by a court for any type of unprofessional conduct or abusive conduct;
  - h. maintains his or her principal office in Smith County (A principal office is the commercial location where the attorney conducts the majority of his or her criminal law practice, and does not include a post office address);
  - i. maintain a secretary, receptionist, answering service or daily monitored answering machine or voice mail system at his or her principal Smith County office;
  - j. maintain a current listing in the Tyler, Texas telephone book and/or in directory assistance;
  - k. maintain a functioning fax machine on a dedicated telephone line or an e-mail address, available 24 hours a day and monitored on a daily basis; and
  - l. file with the Appointing Authority a complete, accurate sworn "Application for Felony Court-Appointments," including all required attachments.
8. Caseload. Attorney may handle up to a maximum of 175 cases, including misdemeanor and felonies appeals, writs of habeas corpus assigned by the trial court, DNA motions assigned by the trial court, per year. If Attorney is appointed to 175 cases in any contract term, Attorney shall be required to notify the Appointing Authority immediately so that Attorney will not receive further appointments. This Contract shall include appointments for representation in First, Second, Third, and State Jail Felonies appeals, but shall not include appointment for representation in capital felonies.
9. Compensation for Expenses. Counsel appointed to represent indigent defendants shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts without prior court approval [and same shall be reimbursed in accordance with Article 26.05(d) and Article 26.052(h) of the Texas Code of Criminal Procedure]. Expenses incurred with prior court approval shall be reimbursed in accordance with Article 26.05(d) and Article 26.052(f) and (g) of the Texas Code of Criminal Procedure] according to the following procedures:
- a. Procedure for Prior Court Approval of Expenses. Appointed counsel shall file with the court a pretrial request for advance payment of investigative and/or expert witness expenses to investigate potential defenses. In the discretion of the attorney, this request may be filed as an ex parte confidential request.
  - b. The request for approval of expenses must state the type of investigation to be conducted or the type of expert witness to be retained, must set out specific facts that suggest the investigation will result in admissible evidence or that the services of an expert witness are reasonably necessary to assist in the preparation of a potential defense, and shall include an itemized list of anticipated expenses for each investigator and/or expert witness. The judge shall grant the request for payment of expenses in whole or in part as far as the request is reasonable. If the judge denies the request in whole or in part, the judge shall state the reason for the denial in writing,

attach the denial to the request, and submit the request and denial as a sealed exhibit to the record.

10. Independent Contractor. Attorney is not an employee of the Contracting Authority or the Appointing Authority. At most, Attorney is an independent contractor who shall complete the requirements of this Contract by Attorney's own means and methods of work, and in accordance with the Attorney's professional legal judgment, which shall be in the exclusive charge and control of the Attorney, and is not subject to control or supervision of the Appointing Authority or the Contracting Authority, except as specified in this Contract. ANY DEFENDANT IS THE CLIENT OF THE ATTORNEY - NOT THE CLIENT OF EITHER THE CONTRACTING AUTHORITY OR THE APPOINTING AUTHORITY. IT IS THE DUTY OF THE ATTORNEY AT ALL TIMES TO PROVIDE COMPETENT, ZEALOUS LEGAL SERVICES TO EACH CLIENT IN ACCORDANCE WITH RESPONSIBILITIES UNDER TEXAS LAW, INCLUDING BUT NOT LIMITED TO THE TEXAS CODE OF CRIMINAL PROCEDURE AND THE TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT.
  
11. Standard of Performance. Attorney shall, for the consideration expressed above, provide legal services to each person for whom he or she is appointed, as follows:
  - a. Provide quality, effective, competent, zealous legal representation to all clients in a professional, skilled manner consistent with the attorney's responsibilities under the Texas Disciplinary Rules of Professional Conduct, the Texas Code of Criminal Procedure, and all applicable laws.
  - b. Make every reasonable effort to contact any court-appointed client not later than 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 .
  - c. Ensure continuity of representation of the client unless relieved or replaced in accordance with Texas Code of Criminal Procedure article 26.04(j)(2).
  - d. Attorney shall not assign, subcontract, or delegate any part of the services to be provided by the Attorney under this Contract.
  - e. Attorney shall not accept any payments from a client or third-party for legal services provided in a case assigned under this Contract.
  - f. Attorney shall not release confidential attorney-client information or work product related to any case assigned under this Contract, except when authorized by the Texas Disciplinary Rule of Professional Conduct.
  - g. Attorney shall not represent any defendant when to do so would create a conflict of interest. In the event of a conflict of interest, Attorney shall present evidence to the Appointing Authority, and if so ordered, be allowed to withdraw from representation of that defendant.
  
12. Continuing Requirements. In addition to the foregoing qualifications and performance standards, Attorney shall:
  - a. Submit a monthly report to be approved by the Appointing Authority, in accordance with Texas Code of Criminal Procedure 26.05. The report must include the number

of cases disposed of in the previous month and the types of cases as well as the number of cases currently open and assigned by the courts.

- b. Maintain the minimum qualifications to practice law in the State of Texas and must immediately inform the Appointing Authority of any change in the status of the Attorney's law license. Upon request, Attorney shall provide Appointing Authority with proof of licensure in good standing.
13. Termination of Contract. This Contract may be terminated by the Appointing Authority for good cause, including but not limited to the following:
  - a. Appointing Authority may terminate this Contract if Attorney closes his active office for the practice of law in Smith County, Texas.
  - b. Appointing Authority may terminate this Contract if Attorney fails to perform the duties set forth in this Contract. Such failure shall be supported by judicial findings of that failure.
  - c. Attorney may terminate this Contract if Contracting Authority fails to make timely payments as specified herein.
  - d. Attorney may terminate this Contract if, for reasons beyond the control of Attorney, Attorney is unable to perform the duties required hereunder.
  - e. The Appointing Authority and Attorney may mutually terminate the Contract for force majeure or any change in the applicable or authorizing law, which renders the Contract moot.
14. Effect of Termination Upon the Attorney-Client Relationship. The attorney-client relationship commences upon the appointment of Attorney to represent any person under this Contract. In the event of termination of the Contract, the attorney-client relationship shall continue until the conclusion of the matter for which Attorney was appointed. Appointing Authority, Contracting Authority, and Attorney agree that compensation paid during the term of the Contract shall be adequate consideration for all services to be performed pursuant to the Contract, including the conclusion of any representation described in this paragraph. In the event that Attorney is no longer able or is legally not qualified to conclude such matter, the Appointing Authority shall consider whether the client remains indigent, and if so, make such other appointment as may be necessary to provide effective legal representation for the indigent person.
15. Disputes. Venue of any dispute arising under or with regard to this Contract shall be in a court of competent jurisdiction in Smith County, Texas.
16. Providing false information in an application for appointment under this Contract shall be grounds for immediate termination of the Contract.
17. Falsification of any report, billing documentation or other submission by the Attorney will be grounds for immediate termination of the Contract. In addition, such actions may subject the Attorney to professional discipline and/or criminal prosecution.

**SMITH COUNTY MONTHLY ATTORNEY FEE VOUCHER  
APPELLATE CONTRACT ATTORNEYS**

Required information:

1. Trial Court Case Number
2. Appellate Court Case Number, if any
3. Last Name of Defendant
4. Case Level
5. Proceedings
6. Appeal Perfected Date
7. Brief Submitted Date [or date due if not filed]
8. "Anders" Brief Filed [yes or no]
9. Disposition and Date
10. Current Status as of filing of monthly report [It should be clear if case is finally disposed with no other expected action needed by attorney - or - if additional action is required then exactly what remains to be performed]

The Voucher report shall be filed by First day of each month with the office of the Local Administrative District Judge.

**CASE LEVEL:**

**F**-Felony      **M**-Misdemeanor      **J**- Juvenile      **A**-Appeal      **W**-Writ      **O**-Other

**PROCEEDINGS:** [Nature of Appeal]

**JT**-Jury Trial    **BT**-Bench Trial      **PB**-Plea Bargain Appeal      **OP**-Open Plea Appeal

**RP-True**-Revocation on True Plea Appeal    **RP-Not True**-Revocation on Not True Plea Appeal

**DISPOSITION:**

**P**-Pending      **A**-Affirmed      **R**-Reversed      **REM**-Remanded      **MOD**-Modified  
**PDR** Filed

May 22, 2013

## **Appendix D: Smith County Adult Indigent Defense Plan**

# Smith District Courts Plan

## Prompt Magistration

12/1/2009

### MAGISTRATION

The law enforcement agency having custody must take a defendant before a magistrate not later than twenty-four (24) hours after arrest for a magistrate to hold a probable cause hearing and set bail and inform the accused person of their rights including right to court appointed counsel if indigent.

The magistrate shall inform the defendant of the right to request appointment of counsel and the procedures for requesting appointment of counsel.

At the Magistrate Probable Cause hearing the responsible judge shall comply with Articles 14.06 and 15.17 of the Texas Code of Criminal Procedure for:

1. admonishing the accused of the magistrate and Miranda warnings as provided by law;
2. notification of indigent representation rights;
3. making of record of the magistrate warnings and right to court appointed counsel for indigent accused persons;
4. notification of right to counsel and right to court appointed counsel if indigent;
5. inquiry as to whether the defendant is requesting court appointed counsel;
6. provide defendant with an Affidavit of Indigence and reasonable assistance in completing said forms; and
7. to appoint counsel from the approved appointment list program (or refer immediately to the appropriate designated judge for appointment of counsel as provided by the Local Rule of the Smith County Councils of Judges).

If the defendant does not speak and/or understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31 .

## Indigence Determination Standards

12/1/2009

**SMITH COUNTY**  
**PROCEDURES AND FINANCIAL STANDARDS FOR**  
**DETERMINING INDIGENCE**  
**ADOPTED DECEMBER 17, 2001**

### 1. **DEFINITIONS**

As used in this rule:

(A) "Net household income" means all income of the defendant and spousal income actually available to the defendant. Such income shall include: take-borne wages and salary (gross income earned minus those deductions required by law or as a condition of employment);

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, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. 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.

(B) "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.

(C) "Household" means all individuals who are actually dependent on the defendant for financial support.

(D) "The cost of obtaining competent private legal representation" includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

**2. FINANCIAL STANDARDS FOR DETERMINING INDIGENCE**

The financial standards set forth below shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant the county.

(A) A defendant. is considered indigent if:

- (1) 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
- (2) the income levels in the following table represent 125% of the U.S. Department of Health and Human Services Poverty Guidelines for 2001 as published in 66 FR 10695 (Feb. 16, 2001).

Household size	Income
1 -	\$11,188
2	14,513
3	18,288
4	22,063
5	25,838
6	29,613
7	33,388
8	37,163

For family units with more than eight members, add \$3,775 for each additional member in the family.

(3) the value of the non-exempt assets and property owned by the defendant:

- (I) does not exceed \$2,500;
- (II) does not exceed \$5,000 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(III) does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.

(B) A defendant is considered indigent if, at the time of requesting appointed counsel, the defendant or the defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

(C) A defendant is considered indigent if the defendant:

(I) is currently serving a sentence in a correctional institution, is currently held in custody, 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 health facility is sought; and

(II) has no non-exempt assets or property in excess of the amounts specified above.

(D) A defendant who does not meet any of the financial standards above shall nevertheless be deemed 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 nature of the criminal charge(s), the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter charged, and the amount needed for the support of the defendant and the defendant's dependents.

### **(3) APPOINTING COUNSEL FOR PARTIALLY INDIGENT DEFENDANTS**

(A) A defendant determined to be partially indigent shall be eligible for appointment of counsel only upon payment to the county of an appointment fee of \$ 100 if charged with one or more misdemeanors, or \$200 if charged with, one or more felonies. If a defendant determined to be partially indigent pleads or is found guilty, the court may order the defendant to comply with a payment schedule to reimburse the county for all indigent defense costs in the case.

(B) A defendant shall be considered partially indigent if the defendant does not meet any of the standards for indigence set forth above and:

(I) the defendant's net household income is greater than 125% but does not exceed 175% 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

(II) the value of the non-exempt assets and property owned by the defendant:

(a) does not exceed \$2,500.00;

(b) does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(c) Does not exceed double the estimated cost of obtaining private legal representation on the offenses(s) with which the defendant is charged.

### **4. FACTORS NOT TO BE CONSIDERED**

(A) A defendant's posting of bail or ability to post bail may not be considered in determining whether the defendant is indigent or partially indigent. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in this rule.

(B) The resources available to friends or relatives of the defendant may not be considered in determining whether the defendant is indigent. Only the defendant's financial circumstances as measured by the financial standards stated herein shall be used as the basis for determining indigence.

## **5. PROCEDURES FOR DETERMINING INDIGENCE**

(A) As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, the person or agency designated in this county by the judges shall provide each arrested person who wants to request appointment of counsel with a form approved by the judges on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The person or agency designated by the judges shall provide the arrested person reasonable assistance in completing the form.

(B) The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing judge or person designated by the judges to appoint counsel in accordance with these guidelines.

(C) The appointing judge or person(s) designated by the judges to appoint counsel shall determine whether the person meets the financial standards for indigence in these rules. The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case.

(D) The arrested person may be required by the magistrate, the appointing judge, or the judge presiding over the case to respond to examination regarding the person's financial resources.

(E) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigence or to impeach the direct testimony of the defendant regarding the defendant's indigence.

(F) 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.

(G) A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court proceeding based on evidence of a material change in the defendant's financial circumstances. A defendant's status as indigent or not indigent also may be reviewed in a formal hearing at any stage of a court proceeding based on additional information regarding financial circumstances, subject to the presumption. If a defendant previously determined to be indigent subsequently is determined not to be indigent, the attorney shall be compensated by the county in accordance with these guidelines for time reasonably expended on the case.

## **6. PAYMENT BY DEFENDANT**

(A) A court that finds that a criminal defendant has financial resources to offset, in part or in whole, the costs of legal services provided under these guidelines may order the

defendant to pay the county that portion of the costs of legal services provided that it finds on the record that the defendant is able to pay.

### **Minimum Attorney Qualifications**

*11/8/2013*

## **SMITH COUNTY SECOND AMENDED STANDARDS RELATING TO THE PROVISION OF COUNSEL TO INDIGENTS IN FELONY CASES**

Adopted October 6, 2006

### Purpose and Scope of Standards

The following standards are designed to provide for a systematic method of providing qualified counsel to indigents in **FELONY** criminal cases. These standards address principles of eligibility and certification for trial, writs of habeas corpus, revocations of probation and counsel on appeal.

### Section I: General Principles of Eligibility.

The following standards shall be applied to attorney certification under any part of these standards:

#### **1. Eligibility**

The attorney shall be familiar with the practice and procedure of the criminal courts of Texas and shall be a member in good standing of the State Bar of Texas and shall be admitted pro hoc vice. Practice before a juvenile court shall be considered as experience in criminal litigation for purpose of these standards. Pro bono service of counsel shall also be considered as experience for purpose of these standards.

#### **2. Evidentiary Matters**

The attorney shall be familiar with the Texas Rules of Evidence and shall have knowledge of the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence.

#### **3. Co-Counsel**

If the Court appoints co-counsel for any offense, it shall be at the discretion of the Court as to the qualification of counsel except as provided herein.

#### **4. Initial Training**

Within one (1) year of an initial application and preliminary certification under these standards, the attorney shall complete a minimum of four (4) hours of Smith County Council of Judges approved training in the field of criminal law and specifically related to the practice before the criminal courts of Smith County. This course shall be offered in September of each year.

## **5. Continuing Training**

To maintain annual certification, successful completion of a minimum of six (6) hours of training in State Bar of Texas and/or Smith County Council of Judges approved training in

criminal law, ethics, evidence or trial practice. This requirement is in addition to the requirements of Section I (4) above. This is an annual calendar year requirement with reporting each April by the presentation of a re-certification affidavit presented prior to April 1 of each year. A failure to present the affidavit shall cause an attorney to be subject to removal of those attorney for appointment.

Each applicant shall provide a copy of their annual CLE certification form provided by the State Bar of Texas with their application to be approved as appointed counsel. The attorney shall mark the number of hours of each CLE course to document the number of hours of CLE pertaining to criminal law as outlined in Title 1, Chapter 174 of the Texas Administrative Code.

Each felony contract attorney shall properly complete the Smith County Case Completed Auditing Form on a monthly basis and timely submit same to their respective District Court office.

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.

### **Section II: Capital Offenses.**

In order to serve as lead counsel in a capital offense where the State of Texas is seeking a death sentence, an attorney must meet the following:

1. exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

have five (5) years experience in criminal litigation;

3. have tried to verdict as lead counsel a minimum of five felony cases and at least two of these cases shall be tried before a jury; or alternatively has served as lead or co-counsel in a minimum of one capital murder trial;

4. have trial experience in the use of challenges to health or forensic expert witnesses

and presenting mitigating evidence at the penalty phase of a death penalty trial; and

5. have participated in continuing legal education relating to death penalty criminal defense.

Section III: Capital offenses where death penalty is not sought by the State of Texas and 1st degree felonies and co-counsel for capital offenses where the State is seeking the death penalty. (This category also includes enhanced felonies which carry a first degree range of punishment.)

In order to be eligible for appointment in the above described offenses, an attorney must meet the following criteria:

1. have four (4) years experience in criminal litigation; and
2. have tried to verdict as lead counsel or co-counsel for the defense or the prosecution of at least three (3) trials of any grade of felony. At least two (2) of these trials must be jury trials.

Section IV: Second and Third Degree Felonies (This category includes enhanced State Jail Felonies.

In order to be eligible for appointment in the above described offenses, an attorney must meet the following criteria:

1. have at least two (2) years of experience in criminal litigation;
2. have tried to verdict as lead or co-counsel for the defense or the prosecution at least two (2) trials of any State Jail felonies or Class A/B misdemeanors. At least one (1) of these trials must be a jury trial.

Section V: State Jail Felony

In order to be eligible for appointment in the above described offenses, an attorney must meet the following criteria:

1. have a license to practice law in the State of Texas.

Section VI: Appellate Counsel.

In order to serve as appellate counsel for capital offenses, whether or not the death penalty has been assessed and in First Degree felonies as defined in Section III, an attorney shall:

1. have three (3) years of experience in criminal litigation; and
2. have filed a brief and/or argued two (2) cases before the Courts of Appeal of Texas, the Texas Supreme Court, the Texas Court of Criminal Appeals, Fifth Circuit Court of Appeals and/or United States Supreme Court.

In all other felonies, an attorney shall have at least one (1) year experience in appellate practice and procedure and filed a brief and/or argued a case before the Courts of Appeal for the State of Texas, the Texas Court of Criminal Appeals, the Texas Supreme Court, Fifth Circuit Court of Appeals and/or United States Supreme Court or shall have (2) years of general experience in criminal litigation.

#### Section VII: Writ Counsel.

In capital felonies where the death penalty has been assessed, appointed counsel for any writ of habeas corpus must possess the following qualifications:

1. The attorney must have three (3) years criminal litigation experience; and
2. The attorney must have filed a brief and/or argued before the Courts of Appeal of the State of Texas, the Texas Court of Criminal Appeals, the U.S. District Court, the Texas Supreme Court, the Fifth Circuit and/or the United States Supreme Court.

For all grades of offenses, the counsel shall be licensed to practice law in the State of Texas.

#### Section VIII: Revocation of Probation.

For trials of felony revocation of probation, an attorney shall have at least one (1) year of experience in criminal litigation.

For trials of State Jail Felonies revocation of probation, an attorney must be licensed to practice law in the State of Texas.

#### Section IX: Criminal Law Specialization.

An attorney who has received his or her specialization in criminal law is qualified to serve on any capital felony where the State is not seeking the death penalty and for all other grades of felony and misdemeanor offenses. The attorney who possesses criminal law specialization shall also be exempt from the CLE requirements set out in Section I.

#### Section X: Amendments.

The Criminal Courts Board may approve changes as necessary to these qualifications.

SIGNED and ENTERED this 6<sup>th</sup> day of October, 2006.

HONORABLE KERRY L. RUSSELL  
STEVENS KENT

HONORABLE CYNTHIA

7TH DISTRICT COURT

114TH DISTRICT COURT

HONORABLE JACK SKEEN, JR.  
W. CLARK

HONORABLE CAROLE

241ST DISTRICT COURT

321ST DISTRICT COURT

## **Prompt Appointment of Counsel**

*12/1/2009*

### **A. Prompt Appointment of Counsel**

- i. 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 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.
- ii. If the 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.
- iii. Appointment Authority
  1. If no case has been filed in the trial court, the appointing authority for misdemeanors is: \_\_\_\_\_
  2. If no case has been filed in the trial court, the appointing authority for felonies is: The District Court for the Defendant's arrest week pursuant to the Smith County Felony Appearance Schedule.
  3. If the case has been filed in the trial court, the appointing authority is: The Trial Court where the case is filed.

### **B. Defendants Appearing Without Counsel - If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:**

- i. 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.
- ii. 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:
  1. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or

2. Waived or has waived the opportunity to retain private counsel.
- iii. The attorney representing the state may not:
  1. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
  2. 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:
    - a. Has been given a reasonable opportunity to retain counsel; or
    - b. Waives or has waived the opportunity to retain private counsel.

C. Waiver of the Right to Counsel

- i. A defendant may voluntarily and intelligently waive the right to counsel.
- ii. A waiver obtained in violation of section IV.B above is presumed invalid.
- iii. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

“I have been advised this \_\_\_ day of \_\_\_\_, 2\_\_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”

- iv. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

### **Attorney Selection Process**

*12/1/2009*

After seeking attorneys to represent indigents in felony cases, an insufficient number volunteered to be establish a rotational system. Therefore, an alternate plan of appointment is adopted.

This alternate plan does not apply to capital murder cases filed in the courts in which the State of Texas is seeking the death penalty. Those cases shall be assigned pursuant to a separately adopted list as approved by the Council of District Judges.

Each District Court shall designate three qualified attorneys who shall work on a month to month basis and who shall be paid \$6,500 per month per attorney for representation of indigents before the Court to which they are assigned. The attorneys designated under this plan shall represent indigents in matters including but not limited to the following: probable cause hearings, bond hearings, arraignment, writs of habeas corpus, docket call, , pretrial, trial and appeal, if any.

Smith County shall also designate two qualified attorneys who shall work on a month to month basis to handle all indigent appeals and writs and as otherwise directed by Felony District Court.

### **Fee and Expense Payment Process**

*10/21/2011*

#### **FEE AND EXPENSE PAYMENT PROCESS FOR ADULTS**

A. Smith County follows a "Contract Attorney" court appointed attorney procedure for defense of indigent defendants at the trial court level and for purposes of appeal. Occasionally, because of conflicts, the trial court is required to appoint a non-contract attorney. In that event, any said Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county.

B. Payment Process: No payment of attorney's fees will be made other than in accordance with the rules set forth below.

i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.

ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.

1. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.

2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60<sup>th</sup> day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.

C. Payment of Expenses:

i. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below; (and as stated under the Miscellaneous section entitled "Appointment of

Investigators and Experts for Indigent Defense"). Whenever possible prior court approval should be obtained before expenses are incurred.

ii. Procedure With Prior Court Approval:

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

- a. The type of investigation to be conducted or the type of expert to be retained;
- b. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and

c. An itemized list of anticipated expenses for each investigation and/or each expert.

2. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- a. State the reasons for the denial in writing;
- b. Attach the denial to the confidential request; and
- c. Submit the request and denial as a sealed exhibit to the record.

iii. Procedure Without Prior Court Approval:

Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

# **SMITH COUNTY COURT APPOINTED FEE SCHEDULE**

## **ATTORNEYS**

**CONTRACT ATTORNEY RATE: \$6,500.00/MONTH**

### **APPOINTED HOURLY RATE**

For all felony activities with the exception of capital cases:

In Court	\$60.00/hour
Out of Court	\$50.00/hour

### Capital Cases

	<u>1<sup>st</sup> Chair</u>	<u>2<sup>nd</sup> Chair</u>
In Court	\$100.00/hour	\$60.00/hour
Out of Court	\$80.00/hour	\$50.00/hour

### **FLAT FEES**

State Jail Felony Guilty Plea	\$250.00
Felony Guilty Plea	\$350.00
Dismissal of Case	\$300.00
Multiple Case Disposition	\$200.00
Indictment Quashed	\$200.00
NON-JURY TRIAL - State Jail Felony	\$500.00
NON-JURY TRIAL - Felony	\$750.00
JURY TRIAL	\$1,000.00
APPEAL	\$1,000.00
Revocations	\$300.00

### **INVESTIGATORS AND EXPERTS**

	<u>Non-Capital</u>	<u>Capital</u>
Expenditure Cap*	\$300 max	\$5,000 max

*\* Attorneys must seek appointment of investigators and/or experts prior to expending funds. While the courts set the caps at this level for initial expenditures, the courts may increase the allowable amount upon further justification.*

**DISTRICT COURTS OF SMITH COUNTY, TEXAS**

**STANDING ORDER FOR COMPENSATION OF ATTORNEYS**

**APPOINTED TO REPRESENT INDIGENT DEFENDANTS IN CAPITAL CASES**

On the \_\_\_\_ day of December, 2002 the below named District Court judges with criminal jurisdiction, after a duly called and conducted meeting and discussion, did unanimously adopt this schedule of fees concerning compensation of court appointed counsel for indigent defendants in whose cases the State of Texas is seeking the death penalty and related expenses made pursuant to Article 26.05, Texas Rules of Civil Procedure; therefore, it is ORDERED that compensation of court-appointed counsel and related expenses, made pursuant to a motion in the form prescribed by the appointing court, shall be as set out below on a case-by-case basis as determined by the judge. Due to the wide variety of circumstances which may be encountered in cases, total compensation for all pre-trial, trial, post-trial, and appellate court appointed counsel services shall be determined by the judge upon the circumstances and complexity of each case. The fees set out below may be adjusted upward or downward as reasonable determined by the judge.

The rates for the lead attorney's services shall be paid at the rate of EIGHTY DOLLARS AND NO CENTS (\$80.00) per hour for out of court time and ONE HUNDRED DOLLARS AND NO CENTS (\$100.00) per hour for in court time, subject to the limitations set forth in this Standing Order. Any co-counsel appointed by the court shall be paid at the rate of FIFTY DOLLARS AND NO CENTS (\$50.00) per hour for out of court time and SIXTY DOLLARS AND NO CENTS (\$60.00) per hour for in court time subject to the limitations set forth herein. In all capital cases, in which the state seeks the death penalty, the maximum amount of attorney fees to be paid to lead counsel shall not exceed FORTY THOUSAND DOLLARS NO CENTS (\$40,000.00). The maximum compensation paid to any co-counsel shall not exceed TWENTY TWO THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$22,500.00).

In capital cases in which the state seeks the death penalty, appointed appellate counsel shall be paid for reasonable services rendered at the rate of ONE HUNDRED DOLLARS (\$100.00) per hour not to exceed FIVE THOUSAND DOLLARS (\$5,000.00) for the appeal of a single case.

**REIMBURSEMENT FOR REASONABLE EXPENSES FOR PURPOSES  
OF INVESTIGATION AND EXPERT TESTIMONY**

Court appointed counsel will be reimbursed for reasonable expenses that are incurred provided prior court approval has been granted upon motion and application and a hearing held on said motion. Reasonable expenses upon prior court approval and after motion and application may include expenses incurred or expected to be incurred for investigation and expert testimony, and will be in addition to the total compensation referred to above. Said fees shall not exceed TWENTY FIVE HUNDRED DOLLARS (\$2,500.00) in total investigator fees and TWENTY FIVE HUNDRED DOLLARS (\$2,500.00) in total expert fees unless the court finds exceptional circumstances or that good cause exists for exceeding said total amount.

**CRIMINAL CASE/CIVIL CONTEMPT (WITH POSSIBLE CONFINEMENT)  
JUVENILE CASE**

**CAUSE NO.** \_\_\_\_\_

**THE STATE OF TEXAS**

**IN THE  
COUNTY COURT**

**vs.**

**AT LAW  
OF**

\_\_\_\_\_

**SMITH  
COUNTY, TEXAS**

**MOTION TO PAY COURT APPOINTED ATTORNEY FEES**

I, \_\_\_\_\_, a duly licensed attorney in the State of Texas as an officer of this court do hereby represent and affirm to the court that as Court Appointed Counsel for the indigent defendant in the above numbered and entitled case, I have rendered the following reasonable and necessary services and request payment of the amounts so indicated: **FEE SCHEDULE: OUT OF COURT TIME \$50.00 PER HOUR, IN COURT TIME \$60.00 PER HOUR, GUILTY PLEA \$250.00, NON JURY TRIAL \$350.00, JURY TRIAL \$600.00** (Fee is subject to the discretion of the Court, based on quality, necessity of service, and unique fact situations).

DATE:

SERVICE:  
TIME: OUT OF COURT/IN  
COURT

TOTAL TIME IN COURT:

\_\_\_\_\_

TOTAL TIME OUT OF COURT:

\_\_\_\_\_

TOTAL AMOUNT REQUESTED:

\_\_\_\_\_

(If additional space is needed use back of motion).

Respectfully,

State Bar Number:

\_\_\_\_\_

\_\_\_\_\_  
Address: \_\_\_\_\_

Phone Number:

\_\_\_\_\_

\_\_\_\_\_

**ORDER TO PAY COURT APPOINTED ATTORNEY**

The court finds that the above reasonable and necessary services were performed by counsel in this case and said above motion should be granted. It is therefore ORDERED that the said Court Appointed Counsel listed above shall be paid, from the General Fund of Smith County, Texas the following amount:

\$ \_\_\_\_\_

Signed on this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

Judge Presiding

Sent to Auditor by Court:

STATE OF TEXAS  
VS.

MAGISTRATE CASE NO.  
SITTING AS MAGISTRATE

FOR  
SMITH COUNTY, TEXAS

**DEFENDANT'S ACKNOWLEDGMENT OF ALLEGED OFFENSES, BONDS AND RIGHTS**

I am the individual whose name appears above. I have been brought before a Magistrate after my arrest on the following charges:

OFFENSE CHARGED

AGENCY &  
WARRANT NO./ON  
SIGHT BOND

- A.
- B.
- C.
- D.

FURTHER, in regard to the offense(s) listed above, I acknowledge and understand as follows:

- I have the right to remain silent and I do not have to make any statements to the police or attorneys representing the state. Any statements I make may be used against me as evidence in Court at a later time;
- If I am too poor to afford a lawyer, I have the right to request that a lawyer be appointed to represent me at the state's expense (except in Class Misdemeanor cases);
- I have the right to have a lawyer present during an), questioning by peace officers or attorneys representing the State of Texas and I understand that I may stop the interview at any time;
- If I am charged with a felony level offense, I also have the right to have an examining trial if heard prior to an indictment having been presented against me by a Grand Jury;
- If I am not a citizen of the United States, a plea of guilty to the charge(s) at any time could affect my right to remain in this country.
- I have been arrested and charged with a(n) offense(s), but that does not mean that I am guilty; I am innocent until proven otherwise, and I have the right to a trial before a judge or a jury.

**Request of Appointment of Attorney and Statement of Indigency**

Further, the Magistrate before whom I now appear has explained that I have a right to an attorney and if I am too poor to afford an attorney, the county will appoint and pay for in), attorney. The Magistrate has asked me if I am indigent and if I am in need of court appointed representation. Based on my current financial status and abilities:

\_\_\_\_\_ I am NOT INDIGENT. I can afford to hire legal representation and do not request court appointed counsel.

\_\_\_\_\_ I am INDIGENT (unable to pay for my own attorney). I herein request that an attorney be appointed for me. I have been given a Pauper's Oath Application and the magistrate has offered assistance in its preparation.

SIGNED on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Witness: \_\_\_\_\_ Defendant's

Signature:

**MAGISTRATE'S VERIFICATION OF WARNINGS AND DETERMINATION OF PROBABLE CAUSE**

In my capacity as A4ogistralejbi-Sn0h County, I certify that the following procedural safeguards for the Defendant have been observed as required by law:

- I have personally advised the Defendant as to his or her rights including the right to retain counsel, the right to court appointed counsel if the defendant cannot afford legal counsel, the right to remain silent and the right to terminate any interview with law enforcement agencies or representatives of the state, the right to an examining trial in felony cases where a grand jury indictment has not been returned first, and the right to a trial before a Judge or Jury.
- I have personally asked the Defendant if they are indigent and would request that an attorney be appointed to represent them. If the Defendant has indicated that they would like to request indigent appointment of counsel, I have provided to them appropriate forms and assistance for their request. ]his form, once completed has been forwarded to the appropriate office for processing and, if granted, appointment of counsel.
- I have reviewed the charges listed above and find:

PROBABLE CAUSE EXISTS as to each of the charges supported by ? sufficient factual detail set forth in a sworn affidavit of probable cause, or ? supported by documentation as to the existence of (a) confirmed warraru(s) of arrest. There IS therefore sufficient basis for further detention of the defendant, absent posting of bored or bail as set above; OR

? Based upon a lack of factual detail set forth in an affidavit of probable cause or the existence of confirmed warrants, NO PROBABLE CAUSE EXISTS for further detention, and the defendant should be RELEASED IMMEDIATELY.

? Paupers Oath Completed & Reviewed ? Defendant Determined to be Indigent Attorney Appointed

Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ .

CERTIFICATE OF MAGISTRATE

COUNTY OF SMITH  
STATE OF TEXAS

CAUSE NO (S)

I, \_\_\_\_\_, Judge of  
the \_\_\_\_\_ Court  
of Smith County, Texas do hereby certify that

\_\_\_\_\_,  
D.O.B. \_\_\_\_\_ charged with the offense(s)  
of \_\_\_\_\_

Warrant # \_\_\_\_\_ /On Sight \_\_\_\_\_  
appeared before me at \_\_\_\_\_ M., on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at  
\_\_\_\_\_, in Smith County, Texas-,

at that time I warned said \_\_\_\_\_ of the accusation against him and of the affidavit, if any, filed in support of such accusation,; that he had the 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 during any lineup or confrontation by witnesses; of his right to terminate the interview at any time; of his right to request the appointment of counsel if he is indigent and cannot afford counsel and his right to an examining trial. I also informed the above named individual that he is not required to make a statement and that any statement by him may be used against him. Reasonable assistance was provided to the accused in completing the necessary forms. Information was provided **with / without** the assistance of an interpreter. Issues of mental competency of the accused may **exist / do not exist**. The accused was asked if he wished to request appointment of counsel. The accused indicated that he **did / did not** wish to request appointed counsel. An application form **was / was not** provided.

In witness whereof I have subscribed my name on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
JUDGE/MAGISTRATE

Check all those that apply:

Yes

No

1. Probable cause determined
2. Paupers Oath Completed & Reviewed
3. Defendant Determined to be Indigent
4. Attorney Appointed

White - Original

Canary - Judge/Magistrate

Pink - Court Coordinator, Presiding Judge

## Miscellaneous

12/1/2009

### APPOINTMENT OF INVESTIGATORS AND EXPERTS FOR INDIGENT DEFENSE

Appointment and reimbursement for reasonable and necessary investigation, mental health and other experts shall be as provided by law and only upon written motion and prior approval of the trial judge for such appointment and anticipated reimbursement.

#### **Smith County Supplemental Plan for Appointment of Counsel**

Two-thirds of the judges hearing felony criminal cases, having approved it, this Supplemental Plan is added to and is now a part of the Plan for Appointment of Counsel as follows:

#### **Investigative and Expert Expenses.**

Counsel appointed in a non-capital case shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed, according to the procedures set forth below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

#### **Procedure With Prior Court Approval:**

Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state, 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 itemized list of anticipated expenses for each investigation or each expert.

The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the confidential request; and
- (3) submit the request and denial as a sealed exhibit to the record.

#### **Procedure Without Prior Court Approval:**

Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

Articles 26.05(d), 26.052(f), (g) & (h), Code of Criminal Procedure

### **WAIVERS**

The Criminal Courts Board retains authority by majority vote to waive any portion of this plan in exceptionally justified cases or when determined necessary for the fair and impartial administration of justice.

## **Plan Documents**

Smith District Court Attorney Application for Appointment.wpd (12/1/2009 1:07:06 PM) [view](#)  
Smith District Court Attorney Fee Schedule.pdf (5/23/2012 5:54:09 PM) [view](#)  
Smith District Court Attorney Fee Schedule.wpd (12/8/2010 11:26:38 AM) [view](#)  
Smith District Court Attorney Fee Voucher.doc (11/3/2010 9:09:56 AM) [view](#)  
Smith District Court Contracts for Indigent Defense Services.wpd (11/8/2013 10:00:00 AM) [view](#)