



**TEXAS INDIGENT DEFENSE  
COMMISSION**

**Fiscal Monitoring Report**

**Lubbock County, Texas**

**FY 2016 Indigent Defense Expenses**

**Final Report**

**October 2, 2017**

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# EXECUTIVE SUMMARY

Lubbock County's on-site fiscal monitoring visit was conducted March 20-24, 2017. Follow-up email exchanges continued to May 19, 2017 to complete the record review. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants.

The expenditure period of October 1, 2015 to September 30, 2016 (FY2016) was reviewed during the fiscal monitoring visit and for the subsequent follow up documents.

## Summary of Findings

- Unallowable expenditures, including general court expenditures, civil case expenditures and prosecuting costs, were included with the criminal indigent defense expenses on the FY 2016 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e).
- Written explanations from the director of the Managed Assigned Counsel program for variances between amounts approved and amounts billed on attorney fee vouchers were not present on attorney fee vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedures.
- Data entry errors were noted on the FY 2016 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e).
- A variety of forms were found to be utilized by the appointed attorneys on juvenile cases in contravention of Code of Criminal Procedure Article 26.05 (c).

## Objective

The objectives of this review were to:

- determine the accuracy of the Indigent Defense Expenditure Report;
- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant;
- validate policies and procedures relating to indigent defense services;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns on the indigent defense program requirements.

## Scope

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grants during FY2016. Records provided by the Lubbock County Auditor's Office, Regional Public Defenders Office for Capital Cases (RPDO) and the Lubbock Private Defenders Office (LPDO) were reviewed. Compliance with other statutory indigent defense program requirements was not included in this review.

## Methodology

To accomplish the objectives, the fiscal monitor met with assistant county auditors, staff at the LPDO, staff at the RPDO and court administration staff. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- general ledger and accounts payable transactions provided by the Lubbock County Auditor's Office, the RPDO and the LPDO;
- IDER and attorney fee schedule;
- public attorney appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts and
- the county's local indigent defense plan.

# **DETAILED REPORT**

## **BACKGROUND INFORMATION**

### **County Background**

Lubbock County is located in Northwest Texas in an area which is called the South Plains. Lubbock County was created on August 21, 1876 by an act of legislation that divided Bexar County into forty-eight counties. Lubbock County was named after Tom S. Lubbock, a former Texas Ranger, Confederate Officer and brother of Francis R. Lubbock, Civil War Governor of Texas. The County serves an estimated population of 300,961. Lubbock County is a political subdivision of the State of Texas. The County occupies an area of 901 square miles, of which 5.1 square miles is water. The neighboring counties are Hale, Crosby, Lynn, Hockley, Lamb, Terry and Garza.

### **Commission Background**

In January 2002, the 77<sup>th</sup> Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82<sup>nd</sup> Texas Legislature changed the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council, and is administratively attached to the Office of Court Administration (OCA).

The 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.

The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. The Commission conducts these reviews based on the directive in Section 79.037(c) Texas Government Code, to “monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant...”, as well as Section 173.401(a), Texas Administrative Code, which provides that “the Commission or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.”

### **Formula Grant**

The County submitted the FY 2016 indigent defense on-line grant application to assist in the provision of indigent defense services. Lubbock County met the formula grant eligibility requirements and was awarded \$329,021 for FY 2016.

### **Discretionary Grant**

Lubbock County is the managing county for the multi county Regional Public Defender Office for Capital Cases (RPDO) and received discretionary grant funds in the amount of \$3,530,400 for FY 2016. The expenditures for this grant were reviewed.

## **LPDO and RPDO**

Lubbock County is the first jurisdiction to establish a Managed Assigned Counsel (MAC) Program in Texas. Lubbock County also oversees the administration of the Regional Public Defender Office for Capital Cases (RPDO), which has grown from a regional program to a statewide program.

### **LPDO**

The Lubbock Private Defender Office (LPDO) is an independent non-profit corporation that contracts with the county of Lubbock to operate the MAC. The LPDO appoints counsel to eligible indigent defendants accused of a felony or misdemeanor crime in Lubbock County. (Lubbock County Judges continues to appoint counsel for juvenile and conflict cases.)

The LPDO oversees the appointed counsel, provides other contracted services to assist counsel, and ultimately pays counsel for legal services. In 2009 Lubbock County was awarded a multi-year discretionary grant to operate a Mental Health Private Defender Program. In 2012 Lubbock County was awarded a multi-year discretionary grant to expand the program to cover all felony and misdemeanor cases.

The mission statement of the LPDO is as follows: “The Lubbock Private Defender’s Office shall represent those indigent defendants charged with the commission of misdemeanor and felony offenses in Lubbock County by providing high quality, cost-effective legal services and ethical, professional, and competent manner. We shall see to secure the legal protection of our clients, and enhance the quality of life in our community. Accomplishing our mission, we shall treat all people with dignity, respect, honesty and fairness.”

A Managed Assigned Counsel Oversight Committee provides “oversight and direction” to the LPDO. The committee’s purpose is “to ensure the objective evaluation of” the LPDO and “to provide necessary recommendations to the County” regarding the contract, and “guaranteeing that financially eligible individuals accused of crimes in Lubbock County will receive the most appropriate, timely, and qualified representation.”

### **RPDO**

The RPDO program began in 2008 with a grant from the Commission to Lubbock County to start the program in the 7th and 9th Administrative Judicial Regions, encompassing the area from Abilene and Odessa to Amarillo and the panhandle. The program has since expanded to all Administrative Judicial Regions in the state. Counties enter into an interlocal agreement with Lubbock County and pay a participation fee based on a formula that considers both population and history of capital cases.

The program provides high quality defense services to indigent defendant’s death penalty cases in small and mid-sized counties. Because capital cases can be very costly to defend, participation in the program increases budget predictability for participating counties. The RPDO provides an entire team of defense service providers as required by Texas State Bar guidelines and Supreme Court case law, including attorneys, investigators, and mitigation specialists. The office is appointed immediately to represent any person arrested on capital murder charges eligible for the death penalty.

The program is available to serve 240 counties in the state with populations of less than 300,000 at the time the program was started in 2007. Currently 177 counties are participating in the program. The RPDO has eight offices across the state in Lubbock, Burnet, Amarillo, Wichita Falls, Midland, Terrell, Clute and San Antonio.

## DETAILED FINDINGS AND RECOMMENDATIONS

### Finding One

Lubbock County included some general court expenditures, civil case expenditures and prosecuting cost with the criminal indigent defense expenses in the FY 2016 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e). These expenditures are not eligible indigent defense expenditures and should not be reported on the IDER. Nine vouchers from the MAC program and an additional seventeen vouchers paid directly by the county for the expert witness, investigation and other direct litigation expense categories were reviewed, along with two journal entries re-classing expenses in this category. No issues were found in these vouchers paid by the MAC program. However the county appears to have included civil case and general court expenses on the IDER. In addition, twelve attorney fee vouchers paid directly by the county were reviewed. One of these vouchers was the payment to an attorney serving as a special prosecutor.

The county pays directly court reporter transcript fees and mental health evaluations on all cases including those appointed to the LPDO. Of the seventeen vouchers reviewed that were directly paid by the county, nine were for transcript costs and eight were for expert witness expenses. Of the nine vouchers reviewed for transcript cost, one was found to be for a foster care hearing (a civil matter) and two were found to be for the court reporter's time in the court room (a general court expense). Of the eight vouchers reviewed for expert witnesses, one appears to be for a civil case as it is styled "ITIO: [child s name]" while an additional two vouchers list multiple cases and has the description "**competency evaluation**" describing the services performed.

Costs for civil cases and for prosecuting cases are not allowable on the IDER. The costs incurred to have a court reporter present in the court room and costs for mental health evaluations to determine competency to stand trial are not eligible indigent defense costs, but rather general court expenses which may not be included on the IDER.

The only mental health examinations that are eligible indigent defense expenses are expert assessments requested by the defense counsel where the results are reported exclusively to the defense team. No mental health evaluations requested by the judge or prosecuting attorney should be reported as indigent defense expenses. A cursory review of the general ledger account for expert witness indicates a majority of entries for this type of expenditure are for ineligible competency evaluations. In order to include mental health expert costs on the IDER, support should be documented that the expense is requested by the defense attorney and that reports are privileged information of the defense team.

Due to the inclusion of general court expenditures, civil case expenditures and prosecution costs reported on the criminal indigent defense expense report, the county overstated the FY 2016

criminal indigent defense expenditures. This could mean that the FY 2017 formula grant for Lubbock County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual: <http://www.tidc.texas.gov/media/48321/fy16-ider-manual.pdf>

### **Recommendation:**

The county needs to review the general ledger accounts for **court reporter transcript fees** and **expert witness – criminal** and determine the amount of expenditures related to civil cases and general court expenses that were included in those two accounts. The County should report the results of this review to TIDC so that the amount of overpayment of FY2017 formula grant can be determined.

Procedures to identify and record expenses for psychological evaluations performed at the request of the appointed defense counsel for the exclusive use of defense counsel in preparation of a defense should be developed. It is not necessary to recalculate the expenditures related to mental health evaluations reported for FY 2016 to determine the amount that is ineligible. However going forward the county must ensure that mental health expert fees are tracked in such a way as to separate eligible defense expert fees from competency evaluations ordered by the court.

Procedures to identify and record expenses unrelated to the defense of an indigent defendants should be developed.

### **County Response:**

#### **Lubbock County Action Plan**

*The County will review the FY 2016 general ledger accounts for Court Reporter Transcript Fees and Expert Witness – Criminal in order to identify any expenditures related to civil cases and general court expenses that were inadvertently included in these accounts. The County will report the dollar amount of unallowable expenditures to the TIDC.*

*The County is reviewing FY 2017 transactions to make sure expenditures for mental health evaluations to determine competency to stand trial are not included in eligible indigent defense costs.*

*The County is reviewing with staff the types of expenditures that are eligible and ineligible indigent defense costs so that the payment vouchers are correctly coded and posted to the proper accounts.*

**Contact person(s):** *Crystal Spradley*

**Completion date:** *August 18, 2017*

## **Finding Two**

The Code of Criminal Procedure (CCP) Article 26.05(c) reads in part . . . and “if the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount.” The Managed Assigned Counsel program utilizes the Defender Data software program to document and process the activity of the attorney’s assigned to represent indigent defendants in felony and misdemeanor cases for Lubbock County.

The attorney portal of the software allows for the attorney to record the description of activity and the amount of time he spent on each activity he has performed for defendant, which in turn creates an invoice. This invoice is reviewed by the director of the program. If the amount of time for an activity is more than the standard amount allowed per a predetermined guideline, the amount of time may be decreased to the approved guideline, which will change the amount approved for the invoice. The requested amount and the approved amount are displayed on the invoice, however no written explanation for the variance is available on the voucher. Of the ninety-five (95) invoices reviewed for the LPDO, four had variances in the amount requested and amount approved with no written explanation for this variance.

### **Recommendation:**

The director should provide written explanation for any variance in the billed and approved amounts.

The director could print out vouchers with a variance and then provide a written explanation on that voucher. This voucher can then be provided to the attorney while a copy of the voucher can be scanned and maintain in a file for documentation of the written explanation.

The director could request Defender Data to provide a field in the software program so that the director could use a dropdown menu of common reasons for variances or to write an explanation for the variance so that the written explanation is provided on the voucher that is kept electronically within the software files.

### **County Response:**

#### **Lubbock County Action Plan**

*The County will review the results of the Monitoring Report with the LPDO director and will require written explanation for any variances between the billed and approved amounts.*

**Contact person(s):** *Lubbock OCA*

**Completion date:** *By November 15, 2017*

### **Finding Three**

Under Section 79.036(e) of the Texas Government Code, the county auditor shall prepare and send to the Commission in the form and manner prescribed by the Commission ...an analysis of the amount expended by the county:

- (1) in each district, county, statutory county, and appellate court;
- (2) in cases for which a private attorney is appointed for an indigent defendant;
- (3) in cases for which a public defender is appointed for an indigent defendant;
- (4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and
- (5) for investigation expenses, expert witness expenses, or other litigation expenses.

Twelve attorney fee vouchers were listed in the “**Appointed Attys – Criminal**” general ledger account for cases paid directly by the county and all twelve were reviewed. Two vouchers were listed for cases in County Court at Law 1, two vouchers were listed in the 140<sup>th</sup> District Court, and five cases were listed in the 137<sup>th</sup> District Court. Three others were not identified by court on the general ledger. A review of these three vouchers determined that the court should be in one case the 364<sup>th</sup> District Court, and the remaining two vouchers were interim vouchers for the same appeal case in the 140<sup>th</sup> District Court.

The dollar amount reported for each District Court on the IDER was supported by the financial data on the general ledger, however one of the five vouchers listed for the 137<sup>th</sup> District Court was not for a defense attorney, but rather a special prosecutor. Therefore it was not eligible to be included on the IDER. The County Court at Law 1 amount reflected on the IDER was for one of the two cases listed on the general ledger. In addition, expense reimbursements were found on two of the attorney fee vouchers and these amounts should be classified as “other direct litigation costs.” The number of cases reported for each court was not supported by the data provided because the appeal case was not reported in the case count.

For the LPDO, the data necessary to prepare the IDER appears to be captured within the Defender Data software program. However this data is not available in any one report. To accommodate the reporting requirement of the LPDO for the IDER, the check register for the LPDO is presented to the county at least once a week. Attached with this register are pdf copies of attorney fee vouchers and/or other expenses as well as check stubs. The county has hired a part time employee to enter the LPDO data into an Excel spreadsheet. The dollar amount on the excel spreadsheet prepared by the county had expenses for attorney fees that reconciled back to the LPDO records. However the LPDO reported payments on eight appeal cases while only one appeal case was reported on the IDER.

### **Recommendation:**

Procedures to identify the number of cases disposed on each voucher and to eliminate duplicate case counts for interim payments should be developed. Procedures to identify and classify other direct litigation expense on attorney fee vouchers should be developed.

The LPDO should continue to work with Defender Data to create a report or arrange for a data dump to Excel with the necessary fields available to complete the IDER.

The spreadsheet maintained by the county should be made available to the LPDO on a periodic basis so they can reconcile as best as possible the accuracy of the spreadsheet data.

**County Response:**

**Lubbock County Action Plan**

*The County will develop procedures to identify vouchers presented for interim payments in order to accurately report the number of cases disposed. The County is working with the LPDO in order to capture information on appeal cases so they can be correctly reported.*

*The County is reviewing with staff the types of expenditures that are eligible and ineligible indigent defense costs so that the payment vouchers are correctly coded and posted to the proper accounts.*

**Contact person(s):** *Lubbock OCA*

**Completion date:** *by November 15, 2017*

**Finding Four**

Code of Criminal Procedure Article 26.04(a) requires the courts to adopt and publish written countywide procedures for providing indigent defense services, commonly known as an indigent defense plan. As part of these procedures, the judges must adopt an attorney fee voucher form consistent with CCP Article 26.05(c). Additionally, CCP Article 26.05(c) reads in part "...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 ...." Government Code Sec 79.036 requires that these countywide procedures be provided to the Commission bi-annually. Lubbock County juvenile court adopted and properly submitted its plans.

Seventeen vouchers from the juvenile court records were reviewed. Of these vouchers three different forms were utilized. Six of the vouchers appear to be on the form published in the indigent defense plan. Attorneys utilizing this form appear to have also submitted a detailed invoice. However, eleven vouchers did not use the voucher form included in the Indigent Defense Plan. Seven of these vouchers were for a flat fee amount. The remaining four were for hourly rates but they did not provide any description of the activity performed. Each of these two forms were titled **Order Setting Attorney's Fee.**

**Recommendation:**

The juvenile judges should instruct all attorneys to use the voucher form that is incorporated into the County's adopted Juvenile Court Indigent Defense Plan.

The judges should only accept vouchers submitted on the approved form and if the approved form varies from the one already posted in the indigent defense plan the new form should be submitted as part of the indigent defense plan.

As an observation to be considered, none of the forms utilized provide a space to write an explanation for any variance.

**County Response:**

**Lubbock County Action Plan**

*The County will review the results of the Monitoring Report with the judges and request that only forms incorporated into the County's adopted Juvenile Court Indigent Defense Plan be accepted for payment.*

**Contact person(s):** *Lubbock OCA*

**Completion date:** *by November 15, 2017*

# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

### Indigent Defense Expenditure Reporting

<b>LUBBOCK COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Population Estimate	294,235	296,110	300,961
Juvenile Assigned Counsel	\$132,545	\$146,020	\$156,885
Capital Murder	\$0	\$0	\$117,475
Adult Non-Capital Felony Assigned Counsel	\$1,672,178	\$2,075,660	\$1,836,354
Adult Misdemeanor Assigned Counsel	\$814,324	\$900,841	\$797,225
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$54,902	\$15,573	\$2,084
Adult Misdemeanor Appeals	\$2,500	\$12,917	\$0
Licensed Investigation	\$41,733	\$64,779	\$168,683
Expert Witness	\$213,414	\$250,855	\$349,442
Other Direct Litigation	\$216,145	\$149,265	\$126,922
Total Court Expenditures	\$3,147,741	\$3,615,910	\$3,555,071
Administrative Expenditures	\$713,798	\$650,527	\$736,910
Funds Paid by Participating County to Regional Program	\$144,659	\$144,659	\$84,051
Total Public Defender Expenditures	\$4,630,732	\$5,069,893	\$0*
Total Court and Administrative Expenditures	\$8,636,930	\$9,480,989	\$4,376,032
Formula Grant Disbursement	\$475,328	\$336,349	\$329,021
Discretionary Disbursement	\$2,232,875	\$2,281,576	\$3,558,845
Reimbursement of Attorney Fees	\$147,843	\$131,961	\$136,934
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Assigned Counsel Cases	8,798	9,235	9,224

Source: Texas Indigent Defense Commission records

\*For FY 2016 RPDO expenditures were \$4,836,564.

**Note:** RPDO Expenditures were captured in 2014 and 2015 in the Total Public Defender Expenditure line. For FY 2016 these expenditures were moved to a separate report as these expenditures are reimbursed by the Commission grant and by participating counties.

<b>Lubbock County</b>				
<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Texas 2016</b>
Population (Non-Census years are estimates)	294,235	296,110	300,961	27,725,192
Felony Charges Added (from OCA report)	4,801	4,903	4,323	276,879
Felony Cases Paid	4,413	4,251	4,195	200,580
% Felony Charges Defended with Appointed Counsel	92%	87%	97%	72%
Felony Trial Court-Attorney Fees	\$1,672,178	\$2,075,660	\$1,953,829	\$115,192,600
Total Felony Court Expenditures	\$2,004,944	\$2,453,193	\$2,555,985	\$131,727,198
Misdemeanor Charges Added (from OCA report)	4,868	4,896	3,898	481,253
Misdemeanor Cases Paid	3,246	3,696	3,696	214,674
% Misdemeanor Charges Defended with Appointed Counsel	67%	75%	95%	45 %
Misdemeanor Trial Court Attorney Fees	\$814,324	\$900,841	\$797,225	\$40,245,051
Total Misdemeanor Court Expenditures	\$882,809	\$934,705	\$838,216	\$41,003,480
Juvenile Charges Added (from OCA report)	411	436	486	27,307
Juvenile Cases Paid	1,122	1,277	1,332	41,989
Juvenile Attorney Fees	\$132,545	\$146,020	\$156,885	\$11,119,664
Total Juvenile Expenditures	\$133,197	\$148,483	\$157,911	\$11,424,425
Total Attorney Fees	\$2,676,449	\$3,151,011	\$2,910,024	\$172,232,454
Total ID Expenditures	\$8,636,930	\$9,480,989	\$4,376,032	\$247,730,647
Increase In Total Expenditures over Baseline	475%	531%	191%	179%
Total ID Expenditures per Population	\$29.35**	\$32.02**	\$14.54	\$8.94
Commission Formula Grant Disbursement	\$475,328	\$336,349	\$329,021	\$25,056,873
Cost Recouped from Defendants	\$147,843	\$131,961	\$136,934	\$11,055,035

### **Indigent Defense Expenditure Reporting**

Source: Texas Indigent Defense Commission records

\*\* For 2014 and 2015, Total ID Expenditures per Population calculation included the cost of the RPDO without consideration of the interlocal agreement payments or the reimbursed payments of the Commission.

## **APPENDIX B – CRITERIA**

### **Criteria**

- Uniform Grant Management Standards
- Texas Government Code, Section 79.036. Indigent Defense Information
- Texas Government Code, Section 79.037. Technical Support; Grants
- Code of Criminal Procedures Art 26.04 Procedures for Appointing Counsel
- Code of Criminal Procedures Art 26.05 Compensation of Counsel Appointed to Defend
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.1
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.2
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter B Definitions
- FY2016 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/48321/fy16-ider-manual.pdf>

## **APPENDIX C – DISTRIBUTION LIST**

Honorable Thomas V. Head  
Lubbock County Judge  
P.O. Box 10536  
Lubbock, TX 79408

Honorable John T. McClendon, III  
Local Administrative District Court  
137<sup>th</sup> District Court  
P.O. Box 10536  
Lubbock, TX 79408

Honorable Judy Parker  
Local Administrative Statutory County Court  
County Court at Law 3  
P.O. Box 10536  
Lubbock, TX 79408-3536

Honorable Leslie F. Hatch  
Chairman of the Juvenile  
237<sup>th</sup> District Court  
P.O. Box 10536  
Lubbock, TX 79408-3536

Ms. Jackie Latham  
County Auditor  
P.O. Box 10536  
Lubbock, TX 79408

Ms. Robin Wilmot  
Grant Auditor  
P.O. Box 10536  
Lubbock, TX 79408

Mr. Philip Wischkaemper  
Interim Executive Director  
Lubbock Private Defender's Office  
1504 Main St.  
Lubbock, TX 79401

Mr. Ray Keith,  
Chief Public Defender,  
Regional Public Defenders Office for Capital Murder  
P.O. Box 2097  
Lubbock TX 79408

Mr. Dean Stanzione,  
Director of Court Administration  
P.O. Box 10536  
Lubbock, TX 79408-3536

Ms. Cryctal Spradling  
Assistant Director of Court Administration  
P.O. Box 10536  
Lubbock, TX 79408-3536

Ms. Karen Sweat  
County Judge Administrator  
P.O. Box 10536  
Lubbock, TX 79408-3536

Mr. James D. Bethke  
Executive Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Wesley Shackelford  
Deputy Director, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701

Mr. Edwin Colfax  
Grants Program Manager, Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202  
Austin, TX 78701