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Presiding Judge, Court of Criminal Appeals

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Mr. Don Hase

Executive Director:  
James D. Bethke

March 31, 2015

The Honorable Charles Ellison  
Constitutional County Judge  
Robertson County Courthouse  
P.O. Box 427  
Franklin, TX 77856

Re: Robertson County Fiscal Monitoring Visit

Dear Judge Ellison:

The Texas Indigent Defense Commission has completed its fiscal monitoring review of Robertson County covering the contract period of October 1, 2012 through September 30, 2013.

The objective of the review was to determine if Robertson County was in compliance with the fiscal requirements of the formula and/or discretionary grants per Commission rules under the Texas Administrative Code (TAC), Uniform Grant Management Standards (UGMS), Texas Government Code, and grant provisions.

The final report including your county response and corrective action plan is enclosed.

We would like to thank Robertson County officials and employees for their assistance and cooperation during the fiscal monitoring process. If you have any questions or need further clarification please do not hesitate to contact me.

Sincerely,

Debra Stewart, CPA, CIGA  
Fiscal Monitor



**TEXAS INDIGENT DEFENSE  
COMMISSION**

**Fiscal Monitoring Report**

**Robertson County, Texas**

**FY 2013 Indigent Defense Expenses**

**Final Report**

**March 31, 2015**

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## **EXECUTIVE SUMMARY**

Robertson County's on-site fiscal monitoring visit was conducted on September 10th and 12th of 2014. Review of the attorney fee vouchers extended offsite. 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, 2012 to September 30, 2013 (FY 2013) was reviewed during the fiscal monitoring visit.

### **Summary of Findings**

- Attorney fee vouchers were not attorney-submitted nor did they include descriptions of services provided or requested fee amount.
- Fee schedules are not used in determining the amounts authorized for payment on the attorney fee vouchers.
- Errors were detected within the county's FY2013 Indigent Defense Expenditure Report (IDER).

### **Objective**

The objectives of this review were to:

- 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 grant during FY 2013. Records provided by the Robertson County Auditor's Office were reviewed.

### **Methodology**

To accomplish the objectives, the fiscal monitor met with the county auditor, the county judge, and the district judge. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- general ledger transactions, invoices, and additional supporting spreadsheet prepared by the Robertson County Auditor's Office;
- IDER and attorney fee schedule;
- public 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

Robertson County (County) was created in 1837. The County is part of the College Station-Bryan, Texas Metropolitan Statistical Area. The County occupies an area of 865 square miles, and serves an estimated population of 17,297. The County is a political subdivision of the State of Texas. Neighboring counties are Limestone, Leon, Brazos, Burleson, Milam, and Falls.

### 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 2013 indigent defense on-line grant application to assist in the provision of indigent defense services. Robertson County met the formula grant eligibility requirements and was awarded \$18,288 for FY 2013.

### Discretionary Grant

Robertson County did not apply for a discretionary grant for the FY 2013; therefore grant funds were not available to review.

### Other Related Issues

During the desk review of the FY 2013 IDER, it was noted that the number of cases paid reported in the IDER combined with the court clerk’s reports to the Office of Court Administration show that counsel was appointed in 8.66% of the misdemeanor cases when compared to the statewide percentage rate at 41.59%. This low appointment rate indicates a procedural concern.

## **DETAILED FINDINGS AND RECOMMENDATIONS**

### **Finding One**

Attorneys do not submit invoices that include (1) itemized services performed and (2) fee request for those services.

Fifty-four of the 62 attorney fee vouchers reviewed did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05 (c). 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 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. 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."

Thirty-four district court records were reviewed. Two (2) of the forms submitted were court orders in juvenile cases with no invoice submitted by the attorney. Twenty-six of the forms were attorney-submitted invoices; however, none of the invoices had an itemized description of services performed or requested amount to be paid.

Twenty-eight county court records were reviewed. Twenty-six of the forms submitted were court orders without an invoice submitted from the attorney.

### **Recommendation:**

To ensure compliance with CCP Article 26.05 (c), the County should require attorneys to submit invoices that include both itemized services performed and fee request for those services in addition to information currently provided.

### **County Response:**

The Judge has visited with all attorneys regarding itemization of services.

### **Robertson County Action Plan**

The Judge has visited with all attorneys regarding itemization of services.

**Contact person(s):** Judge Robert Stem and Candace A. Anderson

**Completion date:** Immediately

## **Finding Two**

Payments to attorneys do not appear to be made in accordance with the published fee schedule as required by CCP Article 26.05. CCP Article 26.05 reads in part:

“...(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees, as provided by this subsection, a copy of the schedule shall be sent to the commissioner’s court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates, or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. 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...”

Twenty-six of the attorney fee vouchers submitted to the district court judge were not itemized with the types of services performed. Without this information, any amount authorized could not be validated as a proper payment. Four (4) of the six (6) vouchers with itemized service performed submitted to the district court were approved for amounts not supported by the fee schedule.

Of the twenty-six court orders submitted by the county court for payment none of them were itemized with the types of services performed. Without itemization any amount authorized could not be validated as a proper payment. The two vouchers submitted with an invoice attached were approved for an hourly rate not supported by the fee schedule.

### **Recommendation:**

The payment amounts approved and authorized for the fee vouchers under review were not supported by the current published fee schedule. The Judges should take formal action and adopt a new fee schedule that outlines its current payment practices in accordance with the requirements of CCP Article 26.05(c) or review and approve vouchers in accordance with the existing attorney fee schedule.

### **County Response:**

The Judge has amended and adopted a new fee schedule.

### **Robertson County Action Plan**

The Judge has amended and adopted a new fee schedule.

**Contact person(s):** Judge Robert Stem and Candace A. Anderson

**Completion date:** Immediately

### **Finding Three**

The general ledger of the account for court-appointed attorneys included both civil and criminal appointments. Therefore, the total dollar spent, per the general ledger, does not support the IDER as the amount reported should be for criminal cases only.

The Auditor maintains a separate spreadsheet outside of the general ledger to track information needed for the IDER. Several errors were noted when reconciling the spreadsheet to the general ledger to determine if they support the numbers reported in the IDER. The general ledger included a payment that was not included in the spreadsheet, and vice versa. A payment was listed on the spreadsheet that was not included in the general ledger, as the payment was voided. In addition, the spreadsheet listed a payment that was made for an investigative expense when this amount was included on the IDER as an attorney fee.

As a result, the County did not report indigent defense expenditures and case information in the manner prescribed by Section 79.036 of the Texas Government Code.

### **Recommendation:**

The County must develop procedures to ensure that the information on the spreadsheet utilized for submitting the IDER has been reconciled to the general ledger. This should provide the verification that all payments are included, and supported, on the spreadsheet. The County could maintain separate general ledger accounts for court-appointed attorney fees for each county court criminal cases and district court criminal cases. Civil court cases could be maintained in an account of their own.

### **County Response:**

The County has expanded the general ledger accounts in Court Appointed Attorneys to break down payments as (1) Court Appointed Attorney-Criminal (2) Court Appointed Attorney-Civil and (3) Court Appointed Attorney-Juvenile. This would make reconciliation to the general ledger more desirable.

### **Robertson County Action Plan**

The County has expanded the general ledger accounts in Court Appointed Attorneys to break down payments to Court Appointed Attorneys as (1) Court Appointed Attorney-Criminal (2) Court Appointed Attorney-Civil and (3) Court Appointed Attorney-Juvenile. This would make spreadsheet reconciliation to the general ledger more desirable.

**Contact person(s):** Candace A. Anderson, County Auditor

**Completion date:** Immediately

# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>ROBERTSON COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Population Estimate	16,622	17,189	17,297
Juvenile Assigned Counsel	\$4,750.00	\$10,700.00	\$9,262.50
Capital Murder	\$22,195.97	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$116,833.68	\$127,871.21	\$140,198.76
Adult Misdemeanor Assigned Counsel	\$3,775.00	\$6,293.75	\$10,325.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$6,307.00	\$0.00	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$0.00	\$0.00
Expert Witness	\$0.00	\$0.00	\$0.00
Other Direct Litigation	\$0.00	\$0.00	\$0.00
Total Court Expenditures	\$161,161.65	\$144,864.96	\$159,786.26
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$0.00	\$0.00	\$0.00
Total Court and Administrative Expenditures	\$161,161.65	\$144,864.96	\$159,786.26
Formula Grant Disbursement	\$13,420.75	\$12,092.00	\$18,288.00
Equalization Disbursement	\$15,225.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$13,026.48	\$14,240.15	\$15,193.41
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	275	299	282

### Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

<b>Robertson County</b>				
<b>Year</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Texas 2013</b>
Population (Non-Census years are estimates)	16,622	17,189	17,297	26,251,278
Felony Charges Added (from OCA report)	284	325	333	272,990
Felony Cases Paid	227	255	218	192,045
% Felony Charges Defended with Appointed Counsel	79.93%	78.46%	65.47%	70.35%
Felony Trial Court-Attorney Fees	\$139,029.65	\$127,871.21	\$140,198.76	\$96,567,898.10
Total Felony Court Expenditures	\$139,029.65	\$127,871.21	\$140,198.76	\$109,898,235.77
Misdemeanor Charges Added (from OCA report)	781	716	612	549,030
Misdemeanor Cases Paid	18	23	53	228,357
% Misdemeanor Charges Defended with Appointed Counsel	2.30%	3.21%	8.66%	41.59%
Misdemeanor Trial Court Attorney Fees	\$3,775.00	\$6,293.75	\$10,325.00	\$36,880,978.23
Total Misdemeanor Court Expenditures	\$3,775.00	\$6,293.75	\$10,325.00	\$37,705,538.29
Juvenile Charges Added (from OCA report)	15	21	10	33,504
Juvenile Cases Paid	14	21	11	48,114
Juvenile Attorney Fees	\$4,750.00	\$10,700.00	\$9,262.50	\$10,468,295.88
Total Juvenile Expenditures	\$4,750.00	\$10,700.00	\$9,262.50	\$11,196,725.86
Total Attorney Fees	\$161,161.65	\$144,864.96	\$159,786.26	\$149,496,691.36
Total ID Expenditures	\$161,161.65	\$144,864.96	\$159,786.26	\$217,068,685.09
Increase In Total Expenditures over Baseline	131.92%	108.47%	129.94%	144.69%
Total ID Expenditures per Population	\$9.70	\$8.43	\$9.24	\$8.27
Commission Formula Grant Disbursement	\$13,420.75	\$12,092.00	\$18,288.00	\$19,897,469.00
Commission Equalization Grant Award	\$15,225.00			

**Indigent Defense Expenditure Reporting**

Source: Texas Indigent Defense Commission records

## **APPENDIX B – OBJECTIVE, SCOPE, METHODOLOGY and CRITERIA**

### **Objective**

The objectives of this review were to:

- 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.
- 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 FY 2013. Records provided by the Robertson County Auditor's Office were reviewed.

### **Methodology**

To accomplish the objectives, the fiscal monitor met with the county auditor, the county judge, and the district judge. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- general ledger transactions, invoices, and additional supporting spreadsheet prepared by the Robertson County Auditor's Office;
- IDER and attorney fee schedule;
- public appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- the county's local indigent defense plan

### **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
- FY2013 Indigent Defense Expenditure Report Manual found at
- [http://www.txcourts.gov/tidc/pdf/FY2013\\_IDER\\_ManualFinal.pdf](http://www.txcourts.gov/tidc/pdf/FY2013_IDER_ManualFinal.pdf)

## **APPENDIX C – DISTRIBUTION LIST**

The Honorable Robert Miller Stem  
82nd Judicial District Court  
P.O. Box 75  
Marlin, TX 76661-0075

Ms. Candace A. Anderson  
County Auditor  
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