



**TEXAS INDIGENT DEFENSE
COMMISSION**

Fiscal Monitoring Report

Wheeler County, Texas

FY 2014 Indigent Defense Expenses

Final Report

March 28, 2016

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EXECUTIVE SUMMARY

Wheeler County's fiscal monitoring desk review began on May 7, 2015. 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, 2013 to September 30, 2014 (FY2014) was reviewed as part of the fiscal monitoring desk review process.

Summary of Findings

- Attorney Fee Voucher did not contain the itemization that is needed to comply with Article 26.05(c) of the Texas Code of Criminal Procedures.
- Written explanations from judges for variance in amounts approved and amounts requested on attorney fee vouchers were not present as required by Article 26.05(c) of the Texas Code of Criminal Procedures.
- Some payments to attorneys do not appear to be made in accordance with the published fee schedule as required by Article 26.05 of Texas Code of Criminal Procedures.
- Attorney continuing legal education (CLE) hours are not maintained to verify attorney qualifications.

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 grants during FY2014. Records provided by the Wheeler County Auditor were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor talked with the County Auditor, the County Judge, and the District Judge. The fiscal monitor reviewed:

- a selection of the paid attorney fee vouchers for verification;
- General ledger transactions provided by the Wheeler County Auditor;
- Indigent Defense Expenditure Report (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

Wheeler County is located in the Texas Panhandle. The County occupies an area of 915 square miles, and serves an estimated population of 5,948. The County is a political subdivision of the State of Texas. Neighboring counties are Hemphill, Collingsworth, Gray, Donley and Roberts Counties in the State of Texas and Roger Mills and Beckham Counties in the State of Oklahoma.

Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82nd 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 2014 indigent defense on-line grant application to assist in the provision of indigent defense services. Wheeler County met the formula grant eligibility requirements and was awarded \$13,467 for FY 2014.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Code of Criminal Procedure (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..."

Twenty five attorney fee vouchers for the county court were reviewed while thirty four attorney fee vouchers for the district court were selected for review. Twelve vouchers, seven from the county court vouchers and five from the district court vouchers did not have a requested payment amount, which is a necessary element of itemization. These twelve attorney fee voucher did not meet the statutory requirements of CCP Article 26.05 (c).

Recommendation:

The county should implement a procedure that verifies that a voucher with all the minimum itemization requirements are provided by the attorney upon submission for payment. Also, attorneys should itemize an amount to be paid based on their work and the published fee schedule so that the judge is in position to review and approve that amount.

County Response:

Noted.

Wheeler County Action Plan

Require all attorneys to complete voucher with requested amount and itemization
before authorizing payment.

Contact person(s): Elaine Morris

Completion date: End of State's 15-16 fiscal year

Finding Two

The CCP Article 26.05(c) provides “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.”

Four of the fifty-nine attorney fee vouchers reviewed showed a variance in the amount requested from the amount approved with no explanation as to the reason for the difference. Without the explanation for the difference the county is not in compliance with the statute.

Recommendation:

Judges must document the reason(s) for approving an amount other than the amount requested by the attorney.

County Response:

Noted.

Wheeler County Action Plan

Document reason(s) for approving an amount other than the amount requested.

Contact person(s): Elaine Morris

Completion date: As submitted

Finding Three

Some payments to attorneys do not appear to be made in accordance with the published fee schedule as required by the CCP Article 26.05.

Of the fifty-nine attorney fee vouchers reviewed six did not appear to be paid based on the published fee schedule. However, on four of these it was the attorney that requested a lower amount. There was one attorney fee voucher submitted to the county court that had a total request of \$500.00 to cover two unindicted cases. The judge approved a total of \$250.00 to cover both cases. When reviewing the fee schedule all misdemeanor cases are paid a minimum of \$500.00 each. The sixth attorney fee voucher listed four felony cases of which one was dismissed. The attorney requested \$2,600.00 which appears to be \$750.00 for each case and \$350.00 for the dismissed cases. The judge appeared to have changed the amount to \$2,500.00 as the dismissed felony cases should pay \$250.00 per case, however \$2,600.00 was paid.

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 review the fee schedule and take formal action, if necessary, to adopt a new fee schedule that outlines its current payment practices in accordance with the requirements of CCP Article 26.05(c).

County Response:

Noted.

Wheeler County Action Plan

The judges will review fee schedules and adopt a new schedule, if needed.

Contact person(s): Elaine Morris

Completion date: At next judges meeting

Finding Four

Texas Administrative Code (TAC) rule §174.1 appointment in criminal cases states “If an attorney is otherwise eligible under the procedures developed under Article 26.04, Code of Criminal Procedure, an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period. ...” Additionally, for appointment in juvenile cases §174.2, an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.

The County did not demonstrate that the attorney’s assigned criminal cases had met the CLE requirements to receive such appointments. The county may have made ineligible payments to these attorneys. §174.4 does allow for Emergency appointment

Recommendation:

The county should implement a procedure in place that verifies all attorneys included on the current appointment list have met the current year’s CLE requirements.

County Response:

Noted.

Wheeler County Action Plan

Implement a procedure requiring attorneys to submit CLE minimums for

verification of requirements.

Contact person(s): Elaine Morris

Completion date: As submitted

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

WHEELER COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2012	2013	2014
Population Estimate	5,492	5,675	5,948
Juvenile Assigned Counsel	\$0.00	\$1,300.00	\$1,250.00
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$20,713.53	\$35,190.00	\$64,315.00
Adult Misdemeanor Assigned Counsel	\$8,350.00	\$16,500.00	\$24,250.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$8,029.98	\$0.00	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$2,500.00
Licensed Investigation	\$245.00	\$0.00	\$0.00
Expert Witness	\$1,750.00	\$0.00	\$0.00
Other Direct Litigation	\$142.79	\$88.54	\$31,818.02
Total Court Expenditures	\$39,231.30	\$53,078.54	\$124,133.02
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$3,742.00	\$3,742.00	\$3,742.00
Total Court and Administrative Expenditures	\$42,973.30	\$53,078.54	\$127,875.02
Formula Grant Disbursement	\$7,320.00	\$9,120.00	\$13,467.00
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$0.00	\$0.00	\$0.00
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	78	86	158

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Wheeler County				
Year	2012	2013	2014	Texas 2014
Population (Non-Census years are estimates)	5,492	5,675	5,948	26,642,612
Felony Charges Added (from OCA report)	57	89	149	270,401
Felony Cases Paid	59	51	102	192,732
% Felony Charges Defended with Appointed Counsel	103.51%	57.30%	68.46%	71.28%
Felony Trial Court-Attorney Fees	\$20,713.53	\$35,190.00	\$64,315.00	\$104,577,627.50
Total Felony Court Expenditures	\$22,851.32	\$35,229.40	\$95,985.60	\$121,013,238.56
Misdemeanor Charges Added (from OCA report)	121	198	273	530,335
Misdemeanor Cases Paid	17	33	45	223,043
% Misdemeanor Charges Defended with Appointed Counsel	14.05%	16.67%	16.48%	42.06%
Misdemeanor Trial Court Attorney Fees	\$8,350.00	\$16,500.00	\$24,250.00	\$38,286,859.48
Total Misdemeanor Court Expenditures	\$8,350.00	\$16,549.14	\$24,397.42	\$39,406,492.35
Juvenile Charges Added (from OCA report)	0	2	0	31,996
Juvenile Cases Paid	0	2	2	45,340
Juvenile Attorney Fees	\$0.00	\$1,300.00	\$1,250.00	\$10,901,190.88
Total Juvenile Expenditures	\$0.00	\$1,300.00	\$1,250.00	\$11,597,789.07
Total Attorney Fees	\$37,093.51	\$52,990.00	\$92,315.00	\$159,310,349.08
Total ID Expenditures	\$42,973.30	\$53,078.54	\$127,875.02	\$229,943,368.55
Increase In Total Expenditures over Baseline	71.63%	111.99%	410.73%	159.20%
Total ID Expenditures per Population	\$7.82	\$9.35	\$21.50	\$8.63
Commission Formula Grant Disbursement	\$7,320.00	\$9,120.00	\$13,467.00	\$36,739,158.25

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

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
- FY2014 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>

APPENDIX C – DISTRIBUTION LIST

The Honorable Jerry Dan Hefley
Constitutional County Judge
Wheeler County
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