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Presiding Judge, Court of Criminal Appeals

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July 2, 2014

The Honorable Nate McDonald  
Constitutional County Judge  
Matagorda County Courthouse  
1700 7<sup>th</sup> Street, Room 301  
Bay City, TX 77414

Re: Matagorda County Fiscal Monitoring Visit

Dear Judge McDonald:

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

The objective of the review was to determine if Matagorda 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 Matagorda 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**

**Matagorda County, Texas**

**FY 2013 Indigent Defense Expenses**

**Final Report**

**May 27, 2014**

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## **EXECUTIVE SUMMARY**

Matagorda County on-site fiscal monitoring visit was conducted on February 26-28, 2014. 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**

- Seven paid attorney fee vouchers for September 2013 were not included in the FY 2013 Indigent Defense Expenditure Report (IDER). This was a total of \$6,700 and at least seven cases.
- The case count is done on a manual basis and errors were detected for FY 2013.

### **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 FY 2013. The fiscal monitor reviewed records located in Matagorda County Auditor's Office.

### **Methodology**

To accomplish the objectives, the fiscal monitor met with the county auditor, the county judge, the indigent defense coordinator/district court administrator, and the assistant county auditor who prepares the IDER. The fiscal monitor reviewed:

- random samples of paid attorney fees, expert witnesses, licensed investigations, and other direct litigation expenses for verification;
- general ledger transactions, invoices, and the IDER accounting procedures manual;
- 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**

The County of Matagorda was established in 1836. The County is located between Galveston and Corpus Christi along the Gulf Coast and enjoys a diversity of geography from its wide expanse of prairies to the many creeks, rivers, lakes, bays and Gulf of Mexico. Matagorda County occupies an area of 1,115 square miles and serves an estimated population of 36,702. The County is a political subdivision of the State of Texas. Neighboring counties are Brazoria, Wharton and Jackson.

The fiscal monitor reviewed Matagorda's comprehensive annual financial report for the fiscal year ended December 31, 2012. Reed & Associates, PC a licensed certified public accountants firm, audited Matagorda County's financial statements of the governmental activities, each major fund, and the aggregate remaining fund information of Matagorda County, Texas, as of and for the year ended December 31, 2012, and the related notes to the financial statements, which collectively comprise the county's basic financial statements. The independent auditor's report issued an unqualified opinion regarding these basic financial statements. Matagorda County was also subject to a single audit due to federal grant awards exceeding \$500,000.00 and it was noted that an unqualified opinion was issued on the compliance for major programs report.

The Government Finance Officers Association (GFOA) of the United States and Canada awarded Matagorda County a Certificate of Achievement for Excellence in financial reporting for the FY 2011 comprehensive annual financial report (CAFR). The CAFR must satisfy both generally accepted accounting principles in the United States and applicable legal requirements.

### **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 administratively attached to the Office of Court Administration (OCA).

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.

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 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. Matagorda County met the formula grant eligibility requirements and was awarded \$28,260 for FY 2013.

### **Discretionary Grant**

Matagorda 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 in the IDER combined with the court clerk’s reports to the Office of Court Administration show that counsel was appointed in 3.5% of the misdemeanor cases when compared to the statewide percentage rate at 41.59%. This low appointment rate indicates a procedural concern.

## **FINDINGS AND RECOMMENDATIONS:**

### **Finding One**

The fiscal monitor was not able to reconcile the general ledger provided prior to the on-site visit to the IDER. Additional information was provided during the on-site visit that did support the IDER. This additional information was the general ledger information downloaded to an excel spreadsheet and the case count added. The reviewer found that the general ledger had seven additional invoices totaling \$6,700 that were not included on the IDER. These additional paid invoices represent at least seven unreported cases. These invoices were reported under the general ledger account for the 130th District Court. The underreported attorney fee and the case number on the IDER could have affected the calculation of FY 2014 formula grant award for Matagorda County, and it appears that the county may be in violation of Government Code Sec. 79.036(e).

### **Recommendation:**

The auditor should review end of year cutoff procedures to ensure that all the invoices paid thru September 30<sup>th</sup> are included in the IDER due on November 1<sup>st</sup> each year.

### **County Response:**

The original general ledger report that was run on October 22, 2013 for the time period of October 1, 2012 through September 30, 2013 and used to complete the grant reports did not include the seven invoices in question. However, when the same general ledger report for the time period of October 1, 2012 through September 30, 2013 on January 31, 2014, it did include the seven invoices in question that were paid in September and verified through the review. This is a software issue that does occur on occasion when running various general ledger reports as verified by the Information Services Director. We have been working with the software vendor to correct these issues as they arise.

### **Matagorda County Action Plan:**

We will continue to work with the software vendor to ensure that issue is corrected. Also, we will run the general ledger reports on two different days at least a week apart to ensure that there are no differences in the reports. Since the ending of the grant period does not coincide with the County's fiscal year end, the County Auditor will review all invoices that are paid within one month of the close of the grant period to ensure that the invoice are charged to the correct grant period.

The software issue will be addressed immediately (April 25, 2014) by the Information Services Director and the County Auditor. The review of the year end invoices for the grant period will be reviewed by the County Auditor beginning October 1, 2014 for a period of one month to ensure invoices are charged to the correct grant accounting period. The County auditor will also run general ledger reports beginning November 3, 2014 and will run them on a different day to ensure there is no difference in the reports.

### **Finding Two**

The cause number(s), the name of defendant, and type of case were evident within the general ledger information; however the county auditor had to download the general ledger information to an Excel spreadsheet to create a column and manually enter the case count for each paid invoice. The reviewer found errors in this case count. One example of an error found was in regards to the District Court invoices. An attorney had a portion of his invoices paid to a second vendor and the reviewer found that the case count for the invoice was added to both the attorney voucher line and the second vendor line doubling the case count for that invoice. Another voucher was split to two vendors and then neither line item had the case count added to it. In regards to the County Court invoices, the reviewer noted one invoice that listed four cause numbers yet the count only indicated one case closed. Another line item described the cause number as various cases yet the count listed only one case. The case counts reported on the IDER are not accurate.

### **Recommendation:**

Review the procedure to count and report case numbers and determine what process should be added to double check and verify the case count.

**County Response:**

The process for determining the case count is a manual process that at this time cannot be changed. However, we can create new procedures that will help ensure that this error does not occur in the future.

**Matagorda County Action Plan:**

The County Auditor's staff will continue to input the case number into the description field when inputting an invoice for payment. Once the general ledger report is downloaded into an Excel spreadsheet, the information will be sorted to review the case numbers. If any discrepancies or duplicate case numbers are found, they will be manually verified before the case count is determined.

The inputting of the case numbers into the descriptions fields is currently being done by an Assistant County Auditor. The sorting of the information in the Excel spreadsheet will be done at the time of reporting November 2014 by the County Auditor.

# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>MATAGORDA COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Population Estimate	36,702	36,900	37,260
Juvenile Assigned Counsel	\$10,555.00	\$10,240.00	\$5,980.00
Capital Murder	\$40,235.55	\$9,607.50	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$134,424.26	\$144,062.01	\$124,773.00
Adult Misdemeanor Assigned Counsel	\$13,620.00	\$8,503.00	\$9,325.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$35,671.24	\$10,674.30	\$1,100.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$5,340.00	\$0.00	\$0.00
Expert Witness	\$3,600.00	\$2,600.00	\$3,000.00
Other Direct Litigation	\$37,768.25	\$10,077.47	\$1,320.00
Total Court Expenditures	\$281,214.30	\$195,764.28	\$145,498.00
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$0.00	\$0.00	\$12,239.00
Total Court and Administrative Expenditures	\$281,214.30	\$195,764.28	\$157,737.00
Formula Grant Disbursement	\$24,947.50	\$20,742.00	\$28,260.00
Equalization Disbursement	\$0.00	\$3,872.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$37,763.50	\$37,088.91	\$26,962.00
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	418	426	414

### Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

<b>Matagorda County Data Sheet</b>			
<b>Year</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Population (Non-Census years are estimates)	36,702	36,900	37,260
Felony Charges Added (from OCA report)	538	535	609
Felony Cases Paid	315	344	352
% Felony Charges Defended with Appointed Counsel	58.55%	64.30%	57.80%
Felony Trial Court-Attorney Fees	\$174,659.81	\$153,669.51	\$124,773.00
Total Felony Court Expenditures	\$183,599.81	\$156,269.51	\$127,773.00
Misdemeanor Charges Added (from OCA report)	1,089	938	1,028
Misdemeanor Cases Paid	62	38	36
% Misdemeanor Charges Defended with Appointed Counsel	5.69%	4.05%	3.50%
Misdemeanor Trial Court Attorney Fees	\$13,620.00	\$8,503.00	\$9,325.00
Total Misdemeanor Court Expenditures	\$13,620.00	\$8,503.00	\$9,325.00
Juvenile Charges Added (from OCA report)	63	66	49
Juvenile Cases Paid	29	39	24
Juvenile Attorney Fees	\$10,555.00	\$10,240.00	\$5,980.00
Total Juvenile Expenditures	\$10,555.00	\$10,240.00	\$5,980.00
Total Attorney Fees	\$234,506.05	\$183,086.81	\$141,178.00
Total ID Expenditures	\$281,214.30	\$195,764.28	\$157,737.00
Increase In Total Expenditures over Baseline	128.34%	58.96%	28.08%
Total ID Expenditures per Population	\$7.66	\$5.31	\$4.23
Commission Formula Grant Disbursement	\$24,947.50	\$20,742.00	\$28,260.00
Commission Equalization Grant Award		\$3,872.00	

**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. The fiscal monitor reviewed records located in the Matagorda County Court House, Auditor's Office.

### **Methodology**

To accomplish the objectives, the fiscal monitor met with the county auditor, the county judge, the indigent defense coordinator/district court administrator, and the assistant county auditor who prepares the IDER. The fiscal monitor reviewed:

- random samples of paid attorney fees, expert witnesses, licensed investigations, and other direct litigation for verification of expenses;
- general ledger transactions, invoices, and the IDER accounting procedures manual;
- indigent defense expenditure report and attorney fee schedule;
- public appointment list, attorney applications, attorney criminal and juvenile continuing legal education training, 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 Nate McDonald  
Constitutional County Court  
1700 7th Street, Room 301  
Bay City TX 77414

The Honorable Craig Estlinbaum  
130th Judicial District Court  
1700 7th St, Rm 317  
Bay City, TX 77414-5034

Ms. Cathy Ezell  
County Auditor  
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