



Follow-up Review of Jefferson County's Indigent Defense Systems

June 2020



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MISSION

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.

Contents

Background	4
January 2020 Follow-up Review	5
Program Assessment	7
Requirement 1: Conduct prompt and accurate Article 15.17 proceedings.	7
Requirement 2: Determine indigence according to standards directed by the indigent defense plan.	9
Requirement 4: Appoint counsel promptly.	12
Requirement 5: Attorney Selection Process.	17
Pending Recommendations	19
Appendix A – Summary of Indigent Defense Statistics	20
Appendix B – Documents to Bring for Misdemeanor Indigence Screening	21
Appendix C – Sample Defender Contract	25
Appendix D – Appointed Caseloads of Jefferson County Attorneys.....	30

Background

In 2010, TIDC conducted a fiscal monitoring review of Jefferson County. The report identified the use of a felony contract defender system in which a contract attorney would initially be appointed to a case but would later be replaced if the case moved to the trial docket. The issue was brought before the Commission's Policies and Standards Committee on June 6, 2011. The Committee discussed the issue but did not reach any resolution regarding the automatic replacement of counsel for cases moving to the trial docket. At a meeting of the full Commission on December 1, 2011, the TIDC Board directed staff to perform an onsite review of the contract defender system in Jefferson County.

The contract defender review examined the felony appointment process operated by the district courts (who used the contract defenders). TIDC did not review the other elements of the Fair Defense Act (FDA), such as the distribution of appointments or methods for making misdemeanor and juvenile appointments. The report (issued in July 2012) made recommendations regarding the duration of representation by appointed counsel and regarding the use of bail in determining indigence. The County responded to the report recommendations with amendments to its indigent defense plan for felony cases.

In February 2013, Senator Rodney Ellis and Representative Joe Deshotel sent a letter to Jefferson County Judge Jeff Branick, documenting their concerns about low attorney appointment rates in the County and about the use of bail in determining indigence. In April 2013, Commission staff met with County officials, and after a discussion, agreed the Commission would conduct a full policy monitoring review of Jefferson County's indigent defense practices. Judge Branick sent a letter to the Commission requesting this review.

TIDC issued its full policy monitoring report in April 2014. The report made nine recommendations, focusing on methods for conducting magistrate warnings, methods for determining indigence, and methods for making prompt appointments of counsel. TIDC found that, in felony cases, courts promptly appointed counsel for persons who remained in jail, but appointments for persons making bail were delayed. The felony courts responded by noting they were putting in place a system to promptly rule on counsel requests and made assurances that requests for counsel by defendants in custody for more than 24 hours would be promptly reviewed.

In misdemeanor cases, the courts did not have procedures to promptly rule on requests made at the Article 15.17 hearing. Misdemeanor defendants requested counsel at the Article 15.17 hearing, but sometimes did not receive rulings on the requests, and later entered uncounseled pleas. The misdemeanor courts responded by stating the affidavit of indigence will be provided to defendants at the Article 15.17

hearing, and the courts would make indigence determinations upon receipt of the financial forms.

June 2020 Follow-up Review

TIDC's Policy Monitoring Rules require follow-up reviews of counties where the report included noncompliance findings.¹ Staff members Kathleen Casey-Gamez, Scott Ehlers, and Joel Lieurance conducted the follow-up review. The purpose of this review is to verify that recommendations from the 2014 report have been addressed. The review consisted of a site visit to Jefferson County between April 1st and 3rd, 2019, and of interviews and data queries conducted off-site. TIDC relied on the following items in drawing report conclusions: felony and misdemeanor cases filed in FY2018 (October 2017 – September 2018); felony and misdemeanor dockets; a magistrate warning docket; interviews with officials, Jefferson County staff, and local criminal defense attorneys; the indigent defense expense report (IDER) data; and the local indigent defense plans. The County must respond to this report's findings and recommendations.

¹ 1 TEX. ADMIN. CODE § 174.28(d)(3).

Table 1: History of Monitoring Findings

FDA Core Requirement	Description and Initial Year of Finding	Status after June 2020 Review	
		Satisfied	Pending
1. Prompt Magistration	The magistrate must make a record as to whether each arrestee at the Article 15.17 hearing requests counsel. (2014)	√ (2020)	
1. Prompt Magistration	The magistrate must ask persons arrested on out-of-county warrants whether they want to request counsel. (2014)	√ (2020)	
1. Prompt Magistration	The magistrate must ensure reasonable assistance in completing affidavits of indigence and must ensure the paperwork is transmitted to the appointing authority within 24 hours. (2014)		√
2. Indigence Determination	The County must implement procedures to follow the felony and misdemeanor indigent defense plans' standard of indigence. (2014)		√
2. Indigence Determination	The felony courts must ensure that re-determinations of indigence are only made when there is evidence of a material change in financial circumstances. (2020)		√
4. Prompt Appointment	The felony courts must promptly rule upon all requests for counsel, regardless of whether the defendant makes bail. (2014)	√ (2020)	
4. Prompt Appointment	The misdemeanor courts must promptly rule upon all requests for counsel. (2014)		√
4. Prompt Appointment	The misdemeanor courts must ensure all requests for counsel are ruled upon prior to a waiver of counsel. (2014)		√
5. Attorney Selection Process	The contracts for felony cases need to include a maximum caseload or workload. (2014)	√ (2020)	
5. Attorney Selection Process	Jefferson County must follow the maximum caseload terms set in its contracts with attorneys handling felony cases. (2020)		√

Program Assessment

In the assessment that follows, TIDC compared the core requirements of the Fair Defense Act (FDA) with the County's performance for each recommendation listed in the 2014 report. The review focuses on the following core requirements of the FDA:

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

REQUIREMENT 2: INDIGENCE DETERMINATION STANDARDS

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

REQUIREMENT 5: ATTORNEY SELECTION PROCESS

Requirement 1: Conduct prompt and accurate Article 15.17 proceedings.

At the Article 15.17 hearing, the magistrate must inform the accused of his or her right to counsel, ask whether the accused wants to request counsel, and receive the accused's request for counsel.² The magistrate must make a record of each step of this exchange.³ Once a magistrate receives a request for counsel, he or she must ensure reasonable assistance in completing necessary forms at the same time.⁴ He or she must then transmit the request (and associated financial paperwork) to the appointing authority within 24 hours.⁵

The 2014 review found Jefferson County magistrates did not ask persons arrested "on accusation" whether they wanted to request appointed counsel.⁶ Neither did they ask persons arrested on out-of-county warrants whether they wanted to request appointed counsel. When arrestees requested counsel, they did not receive assistance in completing affidavits of indigence.

On April 2, 2019, TIDC again observed Article 15.17 hearings. The magistrate informed all arrestees of their rights, asked each whether they wanted to request appointed counsel, and made a record of each request. For those defendants requesting counsel, the judge stated he determined indigence and appointed counsel at the hearing. The magistrate advised misdemeanor arrestees not to expect their attorney to meet with them quickly.

² TEX. CODE CRIM. PROC. ART. 15.17(a).

³ TEX. CODE CRIM. PROC. ART. 15.17(e).

⁴ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁵ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁶ The term "on accusation" is a local term meaning that the case had not been filed with the clerk when magistrate warnings were given.

Based on interviews, observations, and case file examination, TIDC found that, after the Article 15.17 hearing, counsel is immediately appointed for felony arrestees who request appointed counsel. However, the accompanying affidavits do not typically contain any financial information. When felony arrestees request counsel, a coordinator designates a specific attorney for the case, notifies the attorney, and sends the attorney's standard introduction letter to the arrestee.

In misdemeanor cases, if a case has been filed with the county clerk, the magistrate warning form (noting the request for counsel) is sent to the county clerk. If no case has been filed, the magistrate warning form stays with a court coordinator until a case is filed. Immediately after the Article 15.17 hearing, there is no appointment of counsel in misdemeanor cases.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1: CONDUCT
PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS.

Recommendation 1: Per Article 15.17(e), in each case in which an arrestee is taken before a magistrate under Article 15.17(a), a record must be made of: (1) the magistrate informing the arrestee of the right to request appointment of counsel; (2) the magistrate asking the arrestee whether he/she wants to request appointment of counsel; and (3) whether the arrestee requested appointment of counsel.

Successfully Addressed.

Recommendation 2: Persons brought before a magistrate on out-of-county warrants are not exempt from Article 15.17 requirements. These persons must receive all Article 15.17 warnings and must be asked whether they want to request counsel. Article 15.17(a) requires that the requests for counsel be transmitted to the appointing authority, which would be the appointing authority of the county issuing the warrant.

Successfully Addressed.

Recommendation 3: Article 15.17(a) requires that the magistrate ensure reasonable assistance in completing the forms for requesting counsel at the time of the hearing. These forms are to be transmitted to the appointing authority within 24 hours of the request being made. A method must be put in place to provide these forms to arrestees at the time of the Article 15.17 hearing, to ensure reasonable assistance in completing the forms, and to transmit them to the appointing authority within 24 hours.

Issue Pending. Requests for counsel are promptly sent to the courts. However, the affidavits of indigence do not typically contain financial information. Additionally, Jefferson County must put into place a method to ensure reasonable assistance in completing the forms.

Requirement 2: Determine indigence according to standards directed by the indigent defense plan.

Under Article 26.04(l) of the Code of Criminal Procedure, counties must adopt procedures and financial standards for determining whether a defendant is indigent. Article 26.04(m) lists the factors courts may consider in determining indigence. Article 26.04(m) states:

In determining whether a defendant is indigent, the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.

The local standards for determining indigence are set in each county's indigent defense plans. For felony cases in Jefferson County, defendants with an income below 100% of the Federal Poverty Guidelines are presumed indigent. In misdemeanor cases, defendants are presumed indigent if they have an income less than 125% of the Federal Poverty Guidelines. In addition (for both felony and misdemeanor cases), a defendant is presumed indigent if (1) eligible for food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing; or (2) is currently serving a sentence in a correctional institution, is residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such mental health facility is sought.

Once a person is determined to be indigent, both the district courts' plan and the county courts' plan presume the defendant remains indigent unless a material change in the person's financial circumstances occurs.⁷

⁷ The requirement is also set in Article 26.04(p) of the Code of Criminal Procedure.

Use of Bail Status to Determine Indigence in Felony Cases

TIDC's 2012 review of contract felony cases found that defendants who made bail were not considered indigent. Furthermore, if a defendant had been appointed counsel, counsel was removed if the defendant made bail. Case files from the 2012 review included attorney letters to clients in which individual attorneys stated they no longer represent the client if he or she makes bail, because the client is no longer indigent. Defendants in these case files often received multiple appointment orders to the same attorney upon each arrest.

In the 2014 review, TIDC could not conclusively determine whether issues relating indigence to bail status had been addressed. Most felony defendants received an automatic appointment of counsel upon arrest, regardless of whether counsel had been requested. Some defendants were never appointed counsel if they made bail shortly after arrest. Most, but not all, attorney letters to clients had removed language noting, if the defendant makes bail, the attorney no longer represents the client because he or she is no longer indigent. The Criminal District Court Judge stated that those attorneys who still included this provision were acting outside of the County's indigent defense plan.

In the current 2020 review, TIDC observed the following relevant facts concerning felony cases:

- 1) At the Article 15.17 hearing, the magistrate appointed counsel for felony arrestees. Immediately afterward, a coordinator completed appointment orders and notified attorneys of appointments.
- 2) TIDC did not find any letters from attorneys stating the attorney does not represent the client if the client makes bail.
- 3) Sample case files included defendants who had initially been appointed counsel, but who continued to receive indigence inquiries after the appointment.⁸
- 4) Based on court observations and interviews, if a felony defendant makes bail, the Drug Impact Court routinely conducts redeterminations of indigence after case filing. Once a defendant makes bail, the defendant is expected to attempt to retain counsel, even though the defendant has already been determined to be indigent.

⁸ As an example, in Cause # 28722 (filed on February 14, 2018), Sean Samuel was appointed as counsel for the defendant on January 19, 2018. However, subsequent to the appointment, the court conducted a Designation of Attorney Docket. At this docket, the 252nd District Court's re-set form instructed the defendant to attempt to hire an attorney (and provide proof of seeing at least three attorneys) or risk the court increasing the defendant's bond. Later, at the Announcement Docket, the Court noted the defendant qualified for appointed counsel.

Article 26.04(l) of the Code of Criminal Procedure requires that procedures and standards for determining indigence apply to each defendant equally, regardless of whether the defendant is in custody or has been released on bail. Once counsel is appointed, Article 26.04(p) and the local indigent defense plan presume the defendant remains indigent unless there is a material change in the defendant's financial circumstances. The courts handling felony cases must ensure that, if counsel has been appointed, the appointment stands, unless there is a material change in the defendant's financial circumstances.

Determinations of Indigence in Misdemeanor Cases

In misdemeanor cases, the 2014 review found the courts did not rule on out-of-court counsel requests. This practice appears to continue. In the current 2020 review, TIDC found 21 sample misdemeanor cases in which arrestees requested counsel at the Article 15.17 hearing, but there was no corresponding order appointing counsel or denying indigence.⁹ The courts handling misdemeanor cases must put in place procedures so that counsel requests can be ruled upon according to the factors set in the county courts' indigent defense plan.

When bonded misdemeanor defendants make in-court requests for appointed counsel, defendants are directed to interview with an indigent screening coordinator. The indigence screening consists of two interviews. At the first interview (right after the misdemeanor docket), the defendant is given a list of documentation to bring to the second interview. The second interview is typically scheduled about one month later, and the defendant must bring W-2 tax forms, evidence of employment (current income), disability payments, available credit card balances, checking / savings account balances, and relevant expenses (see Appendix B for the full list of documents).¹⁰ This timeframe is beyond statutory allowances.¹¹ See Requirement 4 for more details.

⁹ Three additional cases included requests for counsel that were not ruled upon. In these cases, the affidavits of indigence stated the defendant refused to complete the form. TIDC excluded these three cases from its analysis.

¹⁰ According to this list of documents, defendants must bring W-2 tax forms for the last two years to the screening interview. Since the time of TIDC's site visit, Article 1.053 of the Code of Criminal Procedure was created to state:

Except as otherwise specifically provided, in determining a defendant's ability to pay for any purpose, the court shall consider only the defendant's present ability to pay. The courts may wish to re-examine the information collected to only reflect the defendant's **present ability** to pay for counsel.

¹¹ Article 1.051(c)(2) of the Code of Criminal Procedure requires the court or its designee to appoint counsel by the end of the first working day following receipt of the request for counsel.

Comments About Financial Affidavits

Affidavits of indigence did not regularly contain detailed financial information. Generally, spaces for income and expenses were left blank. If better financial information were obtained from defendants when requests for counsel were made, indigence determinations would be more certain. The courts may benefit from setting up a process to conduct interviews for persons requesting counsel at the Article 15.17 hearing.

In 2015, TIDC issued a publication documenting the benefits of effective indigence screening (available at <http://www.tidc.texas.gov/media/40461/effective-indigence-screening-final.pdf>). Tarrant County was highlighted in the publication for its use of financial screeners (who interview defendants on the same day as the defendant requests counsel) and for its indigence determination docket, in which bonded defendants appear at the docket within one business day of their release from jail. Jefferson County may wish to examine the feasibility of adding either of these two programs.

<p><u>FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN.</u></p>
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Recommendation 4: The County must implement procedures to follow the felony and misdemeanor indigent defense plans' standard of indigence.

Issue Pending.

Recommendation 5: The courts handling felony cases must ensure that re-determinations of indigence are only made when there is evidence of a material change in financial circumstances.

New Recommendation.

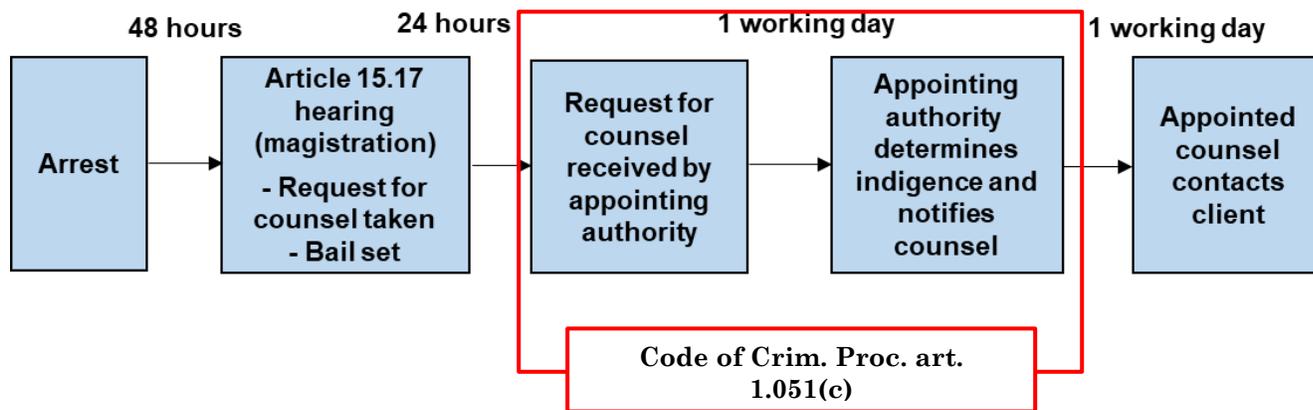
Requirement 4: Appoint counsel promptly.

Article 1.051(c)(2) of the Code of Criminal Procedure requires the court or its designee to appoint counsel by the end of the first working day following receipt of the request for counsel. If an arrestee makes bail, Article 1.051(j) sets the deadline for appointing counsel to be the defendant's first court appearance or the initiation of adversarial judicial proceedings, whichever comes first. *Rothgery v. Gillespie County* clarified that the initiation of adversarial judicial proceedings occurs at the Article 15.17 hearing.¹² Since *Rothgery*, once adversarial judicial proceedings have been

¹² *Rothgery v. Gillespie County*, 554 U.S. 191, 212 – 13 (2008).

initiated, courts must provide a method for defendants to request and obtain appointed counsel regardless of bond status.¹³

Figure 1: Timeline for Appointment of Counsel in Adult Criminal Cases



To assess the timeliness of Jefferson County’s appointment procedures in felony and misdemeanor cases, TIDC examined the time from request for counsel to appointment or denial of indigence. Under the Commission’s monitoring rules, a county is presumed in compliance with the prompt appointment of counsel requirement if at least 90% of indigence determinations in the monitor’s sample are timely.¹⁴

Timeliness of Appointment in Felony Cases

In Jefferson County, counsel is appointed for felony defendants at the conclusion of the Article 15.17 hearing. Defendants may also request counsel at the initial court appearance after an indictment has been filed with the District Clerk’s Office. In the 2014 review, TIDC could not ascertain the timeliness of felony counsel appointments because staff was unable to match a sufficient number of requests made at the Article 15.17 hearing (recorded on magistrate warning forms) with felony appointments of counsel found in case files. However, when defendants made bail, some requests for counsel were not ruled upon.

In the current review, TIDC made another attempt to assess the timeliness of Jefferson County’s appointment procedures in felony cases. TIDC examined 58 sample felony cases filed in FY2018 (October 2017 – September 2018). TIDC was able to determine the time from request until appointment in 40 sample cases. All 40 cases received timely appointment of counsel (**100% timely**) (see Table 2). This percentage exceeds TIDC’s 90% timely threshold for presuming a jurisdiction’s procedures ensure prompt appointment of counsel.

¹³ 1 Tex. Admin Code § 174.51.

¹⁴ 1 TEX. ADMIN. CODE § 174.28.

Table 2: Times to Appointment in Felony Cases

Jefferson Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of case files examined	58		
Total cases with a counsel request in which time to appointment could be determined		40	
Appointment / denial of indigence occurred in:			
0 work days		40	100%
1 work day + 24 hour transfer		0	0%
2 work days + 24 hour transfer		0	0%
More than 2 work days		0	0%
No ruling		0	0%
Timely appointments (0 – 1 work days)		40	100%
Late appointments (more than 1 work day)		0	0%

Timeliness of Appointment in Misdemeanor Cases

In Jefferson County, counsel is appointed for misdemeanor defendants in two different ways. If a defendant does not make bail, the defendant is put onto the jail docket. Counsel is appointed for defendants at the jail docket by a county court coordinator. If a defendant makes bail, the defendant may request counsel at the initial appearance after a case has been filed with the County Clerk’s Office.

On April 2, 2019, TIDC observed misdemeanor dockets in County Court at Law #2 and in County Court at Law #3. In County Court at Law #2, defendants at the docket were told as a group of the right to counsel. The judge explained there may be dangers and disadvantages to representing oneself. The judge then stated he would call each defendant before him to inquire about the plea and choice of representation. If the defendant wished to plead not guilty, the defendant could attempt to retain counsel or see if he or she qualified for appointed counsel. If the defendant wished to plead guilty, the defendant could speak with the prosecutor to work out an agreement. A few defendants requested appointed counsel and were directed to the indigent screening coordinator’s office.

In County Court at Law #3, the judge explained to the defendants that they had a right to an attorney. If anyone could not afford an attorney, the defendant could apply for court appointed counsel. The judge explained that those persons who wished to represent themselves could hear the prosecutor’s offer. If the defendant rejected the offer, he or she would go on the trial docket. The judge stated he did not recommend anyone represent himself or herself on the trial docket. The judge explained that, before speaking with the prosecutor, each defendant would need to sign a waiver of counsel form. The judge further stated there may be collateral

consequences for certain offenses. Several defendants requested appointed counsel and were directed to the indigent screening coordinator's office.

Those defendants who were directed to the screening coordinator's office were given a list of items to bring back at a second interview as proof of the defendant's financial capacity (see Appendix B for the list of items). The second interviews were scheduled about one month after the initial meeting. Defendants were given the option to send the requested information electronically. Once the screening coordinator obtains the financial information, she forwards the information to the judge, who makes an indigence determination and appoints counsel for those determined to be indigent.

In the 2014 review, TIDC could not ascertain the timeliness of misdemeanor counsel appointments. Staff was unable to match a sufficient number of requests made at the Article 15.17 hearing (recorded on magistrate warning forms) with misdemeanor appointments of counsel found in case files. In the small number of cases in which staff obtained requests for counsel made at the Article 15.17 hearing, requests were not typically ruled upon.

In the current review, TIDC made another attempt to assess the timeliness of Jefferson County's appointment procedures in misdemeanor cases. TIDC examined 124 sample misdemeanor cases filed in FY2018 (October 2017 – September 2018). TIDC was able to determine the time from request until appointment in 36 sample cases, and counsel was appointed timely in 11 cases (**31% timely**) (see Table 3). Most requests were not ruled upon. This percentage does not meet TIDC's 90% timely threshold for presuming a jurisdiction's procedures ensure prompt appointment of counsel. The misdemeanor courts must put in place procedures to promptly rule upon counsel requests. Based on TIDC's case sample and observations, two changes need to be made to local procedures. First, all requests made at the Article 15.17 hearing must be collected and promptly ruled upon. Second, all in-court requests must be promptly ruled upon (rather than waiting one month to gather financial information).

Table 3: Times to Appointment in Misdemeanor Cases

Jefferson Misdemeanor Appointment Sample Data	Sample Size	Number from sample	Percent
Number of case files examined	124		
Total cases with a counsel request in which time to appointment could be determined		36	
Appointment / denial of indigence occurred in:			
0 work days		11	31%
1 work day + 24 hour transfer		0	0%
2 work days + 24 hour transfer		0	0%
More than 2 work days		4	11%
No ruling ¹⁵		21	58%
Timely appointments (0 – 1 work days)		11	31%
Late appointments (more than 1 work day) or no ruling on request		25	69%

Waivers of Counsel in Misdemeanor Cases

In 21 misdemeanor cases reviewed by TIDC, defendants requested counsel, but TIDC could not find an order appointing counsel or denying indigence. Some of these defendants may have been told by the magistrate that counsel had been appointed for the defendant, but TIDC could not find any corresponding order appointing counsel. In addition, County Court at Law #2’s instructions to defendants wishing to enter guilty pleas did not provide them the ability to request counsel.

In pertinent part, Article 1.051(f-2) of the Code of Criminal Procedure states the following:

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 court or the court’s designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county 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 private counsel; or
- (2) Waives or has waived the opportunity to retain private counsel.

TIDC interviews, case file reviews, and court observation indicate that courts hearing misdemeanor cases may be directing or encouraging defendants to communicate with

¹⁵ Three additional cases included requests for counsel that were not ruled upon. In these cases, the affidavits of indigence stated the defendant refused to complete the form. TIDC excluded these three cases from its analysis.

attorneys representing the state before denying requests for counsel. Jefferson County should put processes in place to ensure compliance with Article 1.051(f-2).

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

Recommendation 6: The felony courts must promptly rule upon all requests for counsel, whether the defendant remains in jail or makes bond.

Successfully Addressed.

Recommendation 7: The misdemeanor courts must put in place a method to promptly rule upon requests for counsel.

Issue Pending.

Recommendation 8: In accordance with Article 1.051(f-1) and (f-2), the misdemeanor courts must implement procedures to ensure that all requests for counsel are ruled upon prior to any waiver of counsel.

Issue Pending.

Recommendation 9: Based upon in-court observations and interviews with local staff, the misdemeanor courts do not determine indigence within statutory time frames set forth in state law or in the local indigent defense plan. The actual practices must comport with written procedures for determining indigence and appointing counsel.

Issue Pending.

Requirement 5: Attorney Selection Process.

TIDC has established Contract Defender Rules (Title 1, Rules 174.10 – 174.25 of the Texas Administrative Code). TIDC measures the fairness of the selection process in contract cases according to whether there is an open solicitation process that meets this requirement in the Contract Defender Rules. TIDC also reviews the contents of contracts to assure they address all of the elements required by the rules.

In the 2014 review, TIDC found the contracts for felony cases did not include a maximum caseload or workload.¹⁶ The contracts have since been amended to limit attorneys to a maximum of 150 felony cases per year (see Appendix C for a sample contract).¹⁷ Based on FY2018 data reported to TIDC by the Jefferson County Auditor’s Office, five attorneys disposed more than 150 felony cases during the year.

¹⁶ This requirement is set in 1 Tex. Admin. Code § 174.21.

¹⁷ The contract states, “The maximum caseload allowed Attorney pursuant to their contract should not exceed 150 felony cases per year.”

While the number of cases disposed is different from the number of new appointments, four of the attorneys also disposed more than 150 cases in FY2017. See Table 4, showing the number of felony cases disposed by contract attorneys in FY2017 and FY2018. Caseloads are covered in greater detail in the supplement to this report.

Table 4: Felony Cases Disposed by Contract Attorneys

Attorney Name	2018 Non-Capital Felony Cases Paid	2017 Non-Capital Felony Cases Paid
BARLOW, DAVID W.	153	169
CRIBBS, KEVIN SEKALY	156	
DUESLER, DONALD WAYNE	131	155
GROVE, DAVID E.	141	170
JONES, BRACK		178
NORMAND, MARSHA A.	129	144
PARKER, CARL ALLEN	199	178
VAN ZANDT, PHILLIP MICHAEL	155	183
VILLERY, SEAN CHRISTOPHER	162	152

FINDINGS AND RECOMMENDATION FOR REQUIREMENT 5: ATTORNEY SELECTION PROCESS.

Recommendation 10: The contracts for indigent defense services need to include a maximum number of cases or workload each attorney may be required to handle pursuant to the contract as required by 1 Tex. Admin. Code § 174.21. All felony defender contracts must be updated at the end of their terms to comply with the Commission’s Contract Defender Rules under 1 Tex. Admin. Code §§ 174.15 – 174.25.

Successfully Addressed.

Recommendation 11: Jefferson County must follow the maximum caseload terms set in its contracts with attorneys handling felony cases.

New Recommendation.

Conclusion

TIDC enjoyed meeting with Jefferson County officials and staff and appreciates their cooperation during this review. TIDC stands ready to provide any assistance, including grant funding, the County may need in addressing the issues identified in this report.

Pending Recommendations

Jefferson County must respond in writing to how it will address each of the pending 2020 recommendations. TIDC stands ready to provide any assistance, including grant funding, the County may need in addressing the issues identified in this report.

Requirement 1: Conduct prompt and accurate magistration proceedings.

Recommendation 3: Article 15.17(a) requires that the magistrate ensure reasonable assistance in completing the forms for requesting counsel at the time of the hearing. These forms are to be transmitted to the appointing authority within 24 hours of the request being made. A method must be put in place to ensure reasonable assistance in completing the forms.

Requirement 2: Determine indigence according to standards directed by the indigent defense plan.

Recommendation 4: The County must implement procedures to follow the felony and misdemeanor indigent defense plans' standard of indigence.

Recommendation 5: The courts handling felony cases must ensure that re-determinations of indigence are only made when there is evidence of a material change in financial circumstances.

Requirement 4: Appoint counsel promptly.

Recommendation 7: The misdemeanor courts must put in place a method to promptly rule upon requests for counsel.

Recommendation 8: In accordance with Article 1.051(f-1) and (f-2), the misdemeanor courts must implement procedures to ensure that all requests for counsel are ruled upon prior to any waiver of counsel.

Recommendation 9: Based upon in-court observations and interviews with local staff, the misdemeanor courts do not determine indigence within statutory time frames set forth in state law or in the local indigent defense plan. The actual practices must comport with written procedures for determining indigence and appointing counsel.

Requirement 5: Attorney Selection Process.

Recommendation 11: Jefferson County must follow the maximum caseload terms set in its contracts with attorneys handling felony cases.

Appendix A - Summary of Indigent Defense Statistics

Year	2001	2014	2015	2016	2017	2018	Texas 2018
Population (Non-Census years are estimates)	251,455	252,941	250,813	250,798	247,551	254,727	28,525,596
Felony Charges Added (from OCA report)		3,748	3,666	3,449	2,845	2,927	288,260
Felony Cases Paid		2,069	2,172	2,246	1,864	1,725	215,240
% Felony Charges Defended with Appointed Counsel		55%	59%	65%	66%	59%	75%
Felony Trial Court-Attorney Fees		\$1,526,052	\$1,400,022	\$1,573,818	\$1,681,827	\$1,307,710	\$127,990,245
Total Felony Court Expenditures		\$1,806,993	\$1,606,944	\$1,680,985	\$1,860,668	\$1,462,164	\$144,671,726
Misdemeanor Charges Added (from OCA report)		5,630	4,974	4,650	3,717	4,143	467,851
Misdemeanor Cases Paid		361	546	752	497	395	214,494
% Misdemeanor Charges Defended with Appointed Counsel		6%	11%	16%	13%	10%	46%
Misdemeanor Trial Court Attorney Fees		\$85,243	\$124,511	\$169,258	\$113,813	\$86,875	\$43,911,167
Total Misdemeanor Court Expenditures		\$86,959	\$128,144	\$177,925	\$120,212	\$95,822	\$44,786,546
Juvenile Charges Added (from OCA report)		251	260	240	212	152	28,970
Juvenile Cases Paid		448	466	447	452	291	41,578
Juvenile Attorney Fees		\$115,700	\$126,310	\$116,345	\$105,513	\$92,120	\$11,805,587
Total Juvenile Expenditures		\$115,700	\$126,310	\$116,345	\$105,513	\$92,187	\$12,312,690
Total Attorney Fees	\$1,157,582	\$1,787,120	\$1,705,148	\$1,918,772	\$1,942,530	\$1,571,866	\$189,152,540
Total ID Expenditures	\$1,320,921	\$2,104,233	\$1,959,778	\$2,161,343	\$2,205,368	\$1,784,675	\$276,229,545
Increase In Total Expenditures over 2001 Baseline		59%	48%	64%	67%	35%	211%
Total ID Expenditures per Population	\$5.25	\$8.32	\$7.81	\$8.62	\$8.91	\$7.01	\$9.68
Commission Formula Grant Disbursement		\$364,092	\$224,478	\$211,034	\$273,067	\$192,421	\$23,320,001
Costs Recouped from Defendants		\$67,158	\$78,916	\$86,424	\$78,607	\$96,270	\$10,281,678

Appendix B – Documents to Bring for Misdemeanor Indigence Screening

STATE OF TEXAS
VS

DOCKET NO. _____

COURT COUNTY COURT AT LAW # _____

OFFICIAL NOTIFICATION
FINANCIAL AFFIDAVIT

IN ORDER TO COMPLETE THE APPLICATION FOR A COURT APPOINTED ATTORNEY
THE FOLLOWING INFORMATION MUST BE FURNISHED WITH NO EXCEPTIONS:

*** PICTURE ID ***

Rent or mortgage receipts
Assets

Current credit card balance(s)
Medical bills
Other personal bills owed
Defendant employment
Spouse employment
W-2 forms for last two years
Current check stub
Checking/Saving acct balance
Dependents
Food Stamps/TANF
Child Support
Unemployment Benefits

IF THE ABOVE INFORMATION IS NOT FURNISHED BY THE DATE SHOWN BELOW,
YOU ARE SUBJECT TO BE REMANDED TO JAIL.

DATE OF INDICTMENT 0/00/0000
NEXT SCHEDULED COURT DATE _____
APPOINTMENT DATE AND TIME _____

DEFENDANT

SWORN TO AND SUBSCRIBED BEFORE ME on this the 18th day of August ,
2010, to certify which, witness my hand and seal of office.

NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS
VS

DOCKET NO. : _____

COURT COUNTY COURT AT LAW # _____

NEXT COURT DATE _____

NAME _____
LAST FIRST MIDDLE

ADDRESS: _____

PHONE: _____

EMPLOYMENT

ARE YOU EMPLOYED?

IF YES, NAME AND ADDRESS OF EMPLOYER:

PHONE: _____

HOW MUCH DO YOU EARN PER MONTH? \$ _____

IF UNEMPLOYED, GIVE MONTH & YEAR OF LAST EMPLOYMENT: 00/0000

HOW MUCH DID YOU EARN PER MONTH? \$ _____

DO YOU RECEIVE UNEMPLOYMENT? _____

IF MARRIED, IS YOUR SPOUSE EMPLOYED? _____

HOW MUCH DOES YOUR SPOUSE EARN PER MONTH? \$ _____

ASSETS

SELF EMPLOYMENT \$ _____

RETIREMENT \$ _____

SAVINGS ACCOUNT \$ _____

BALANCE

CHECKING ACCOUNT \$ _____

BALANCE

FOOD STAMPS \$ _____

TANF \$ _____

WIC _____

DO YOU OWN?

REAL ESTATE _____

AUTOMOBILE(S) _____

MAKE _____ MODEL _____

OTHER VALUABLE PROPERTY _____

DO YOU HAVE ANY OF THE FOLLOWING PENDING?

WORKMANS COMPENSATION _____

PERSONAL INJURY SUIT _____

PROBATE PROCEEDINGS _____

DEPENDANTS

MARITAL STATUS: _____

TOTAL DEPENDANTS: _____

DEPENDANTS SUPPORTED BY YOU: _____

Appendix C – Sample Defender Contract

PUBLIC DEFENDER CONTRACT
CRIMINAL DISTRICT COURT

CONTRACT AGREEMENT

This contract is made by and between Criminal District Court of Jefferson County, Texas ("Court") [appointing authority] and David Grove ("Attorney") [contractor], and Jefferson County, Texas ("County") [contracting authority] for the purpose of providing legal representation and services to indigent defendants who appear before the Court.

In compliance with the Jefferson County Criminal District Courts Indigent Representation Plan ("Plan"), which is incorporated herein and expressly made a part hereof for all purposes, Attorney agrees to serve as a Contract Public Defender in the Court and to comply with all applicable Plan provisions.

Attorney certifies that he meets all the qualifications required to serve as a Contract Public Defender pursuant to the Plan.

Cases Covered: Attorney agrees to represent indigent defendants in all cases assigned to Attorney in the Court for all pre-trial matters which have not been assigned to indigent defendant trial counsel.

Compensation: Attorney agrees to accept \$8750.00 per month to serve as Contract Public Defender. In addition, Attorney agrees to accept an additional compensation amount not to exceed \$3000.00 annually to pay for required and reasonable Continuing Legal Education requirements, registrations, and travel expenses related thereto.

Investigators and Experts Compensation: Attorney may access investigator and expert services on a case by case basis. Attorney shall be reimbursed for reasonable and necessary expenses, including expenses for licensed investigators and mental health providers and other experts pursuant to Article 26.05, Texas Code of Criminal Procedure, upon showing of good cause. Prior Court approval for these expenses should be obtained whenever possible.

Term of Contract: This contract is in full force and effect on a **month-to-month basis** unless terminated by Attorney or by the Court. If this contract is terminated, Attorney will be relieved of all pending appointments and will not be required to continue representation in any case previously assigned.

Contract Termination: This contract may be terminated at-will by either Attorney or by the Court.

Independent Contractor: Attorney is not an employee of Jefferson County, but 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 Attorney's professional legal judgment. In the course of representing any indigent criminal defendant, Attorney shall be in exclusive control of his professional legal judgment and shall freely and independently exercise same in the best interests of his client, and Attorney shall not be subject to the control of or supervision by the Court, unless otherwise specified in this contract. The indigent criminal defendant is the Attorney's client, not Jefferson County and not the Court. Attorney shall provide reasonably competent, zealous legal services to each indigent criminal defendant in accordance with Attorney's responsibilities under the Texas Disciplinary Rules of Professional Conduct and the Texas Code of Criminal Procedure.

Caseload/Workload Limitation: The maximum caseload allowed Attorney pursuant to their contract should not exceed 150 felony cases per year. The term "Case" referred to herein means a single charge or set of charges concerning a defendant in one court in one proceeding.

Standards of Representation:

(a) Attorney shall provide all services required by Senate Bill 7 as passed by the 77th General Session of the Texas Legislature in 2001, as it amends the Texas Code of Criminal Procedure.

(b) Attorney shall ensure continuity of representation of each indigent criminal defendant unless relieved or replaced in accordance with Article 26.04(j)(2), Texas Code Criminal Procedure.

(c) Attorney shall not assign, subcontract, or delegate any part of the services to be provided by Attorney under this contract unless first obtaining the approval of the Court. Any substitution of attorneys under this provision shall be made from the approved indigent appointment list for the Jefferson County Criminal District Courts.

(d) Attorney must submit a monthly invoice to be approved by the Court for payment.

(e) Attorney must maintain at least the minimum qualifications and requirements listed in the Plan.

(f) Attorney agrees to indemnify and hold harmless Jefferson County from any and all claims arising from the delivery of professional services under this contract.

(g) Attorney shall maintain an office in Jefferson County and the ability to receive facsimile and telephone communications 24 hours a day, 7 days a week.

(h) Attorney is prohibited from accepting any payments from any indigent criminal defendant, or any third party, for legal services provided in an assigned case.

(i) Attorney is prohibited from releasing confidential attorney-client information or work product related to any case covered by this contract except as permitted by the Texas Disciplinary Rules of Professional Conduct.

Conflict: In the event of a conflict of interest between Attorney and any indigent criminal defendant, Attorney shall immediately present such evidence to the Court and, if allowed, be permitted to withdraw from further representation. Such withdrawal shall not affect the other terms of this contract.

Administration: The Court will provide oversight and monitoring to assure that Attorney performs in accordance with the terms of this contract.

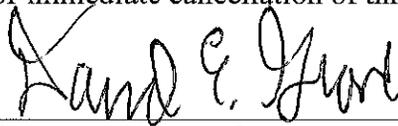
Forum Selection With Regard to Disputes Between the Parties: Venue of any proceedings arising under or with regards to this contract shall be in a court of competent jurisdiction in Jefferson County, Texas.

Additional Terms and Conditions:

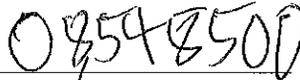
(a) The cases handled under this contract shall all be non-capital.

(b) A determination that Attorney has provided false information in the materials submitted to the Court in response to, or as required under, the terms of the Plan will be grounds for immediate cancellation of this contract by the Court.

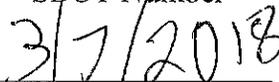
(c) Falsification of any report, invoice, or other documentation submitted by Attorney will be grounds for immediate cancellation of this contract by the Court.



Contract Public Defender [contractor]



SBOT Number



Date

Approved and Accepted:



Criminal District Court Judge,
[appointing authority]

3/7/18
Date



County Judge,
Jefferson County, Texas
[contracting authority]

3/26/18
Date

Appendix D –Appointed Caseloads of Jefferson County Attorneys

2018 Jefferson County cases paid (excludes cases paid from other counties)

Attorney Name	Juv. Cases Paid	Cap. Murder Cases Paid	Non-Capital Fel. Cases Paid	Misd. Cases Paid	Appeals Cases Paid	Total Cases Paid	# Atty's Req'd per WCG	Total Paid	% Time to I.D. in Jefferson County	# Atty's Req'd After Factoring Time for Other Activities
ADAMS, LANGSTON SCOTT	13		26	24		63	31%	\$28,175	50%	0.6
BAILEY, JANSON ELLIOTT				12		12	5%	\$2,000	Did not report	
BARLOW, DAVID W.			153	5	12	170	160%	\$111,550	79%	2.0
BARLOW, DOUGLAS MILTON		1			4	5	13%	\$10,988	5%	2.6
BILL, ALEX			2	6		8	4%	\$2,700	5%	0.8
BOUDREAU, DONALD L.				15		15	7%	\$3,400	5%	1.3
BRUNEY, CATHERINE HUGHES	11					11	0%	\$2,000	Did not report	
BURBANK, THOMAS JOHN	18	1	23	11	6	59	42%	\$26,794	75%	0.6
CLAYTON, DANIEL D.				4		4	2%	\$1,000	25%	0.1
COBB, BRUCE WAYNE				10		10	4%	\$2,200	Did not report	
CONNELL TOUPS, TONYA	12					12	0%	\$3,100	10%	0.0
COOPER, GAYLYN LEON	23		7	2	2	34	13%	\$11,775	45%	0.3
CRIBBS, KEVIN SEKALY	27		156	1		184	122%	\$112,330	95%	1.3
CROCKER, GLEN MICHAEL	20					20	0%	\$4,585	20%	0.0
DOWDEN, LAIRON W.	19					19	0%	\$3,960	5%	0.0
DOWDEN, PHILLIP R.	37					37	0%	\$8,025	9%	0.0
DOYLE, PETER F.				12	1	13	9%	\$2,700	Did not report	
DUESLER, DONALD WAYNE			131	5		136	105%	\$106,250	75%	1.4
EVANS, TRAVIS WAYNE	5		7	11		23	10%	\$9,150	Did not report	
FAGGARD, ALFRED MARKHAM	18			7		25	3%	\$4,275	12%	0.3

Attorney Name	Juv. Cases Paid	Cap. Murder Cases Paid	Non-Capital Fel. Cases Paid	Misd. Cases Paid	Appeals Cases Paid	Total Cases Paid	# Atty's Req'd per WCG	Total Paid	% Time to I.D. in Jefferson County	# Atty's Req'd After Factoring Time for Other Activities
FARSHAD, LAURIE RENE PEROZZO				15		15	7%	\$2,750	25%	0.3
FREEMAN, ANTOINE LEONARD			6	17		23	12%	\$10,313	66%	0.2
FREIMUTH, SOLOMON M.				17		17	8%	\$2,650	20%	0.4
GALMOR, DUSTIN RYAN					5	5	16%	\$12,044	10%	1.6
GILTHORPE, JARED LEVI			1	12		13	6%	\$5,600	30%	0.2
GREENE, STEVEN TRAVIS					4	4	13%	\$1,000	50%	0.3
GROVE, DAVID E.			141	6		147	113%	\$106,650	60%	1.9
HAMM, JIMMY D.			9			9	7%	\$8,645	Did not report	
HOLMES, BRITTANIE ALEXANDRIA			19	16	5	40	38%	\$14,500	50%	0.8
JONES, BRACK	6		67			73	52%	\$57,810	100%	0.5
KELLEY, THOMAS WILLIAM			64	9		73	54%	\$56,150	85%	0.6
KIMLER, RIFE SCOTT			12			12	9%	\$7,500	5%	1.9
LAINE, KEVIN SYMONS	8		115	9		132	94%	\$83,943	100%	0.9
LANDRY, THOMAS JAMES			6	13		19	10%	\$5,250	25%	0.4
LAWRENCE, JACK	1			6	3	10	12%	\$3,825	42%	0.3
LEBLANC, TODD WELDON			10	9		19	12%	\$8,725	15%	0.8
MAKIN, JAMES R.		6	21			27	16%	\$53,763	35%	0.5
MATTINGLY, JENNIFER MAE				6		6	3%	\$1,300	Did not report	
MATUSKA, RYAN LEE	19		12	16		47	16%	\$46,850	60%	0.3
MAYO, THOMAS CALLICOTT				13		13	6%	\$3,050	Did not report	
MCCANN, PATRICK F.					1	1	3%	\$44,580	5%	0.6
NGUYEN, SEAN LAM				2		2	1%	\$1,500	Did not report	
NICKS, JASON ROBERT			4			4	3%	\$3,000	25%	0.1

Attorney Name	Juv. Cases Paid	Cap. Murder Cases Paid	Non-Capital Fel. Cases Paid	Misd. Cases Paid	Appeals Cases Paid	Total Cases Paid	# Atty's Req'd per WCG	Total Paid	% Time to I.D. in Jefferson County	# Atty's Req'd After Factoring Time for Other Activities
NORMAND, MARSHA A.			129			129	101%	\$105,000	100%	1.0
PARKER, CARL ALLEN			199			199	155%	\$105,000	40%	3.9
PLESSALA, RONALD	18					18	0%	\$4,950	100%	0.0
PROVO, ANITA F.	22					22	0%	\$4,960	10%	0.0
PROVO, MARVA J.	27			8	1	36	7%	\$9,600	30%	0.2
RADFORD, WENDELL CONN	16		13			29	10%	\$17,179	40%	0.3
REYNOLDS, NATHAN LEE			10	13		23	14%	\$15,438	60%	0.2
ROGERS, KARLA J.				1		1	0%	\$250	Did not report	
ROJAS, CHARLES FRANK	22		4	16		42	10%	\$11,400	18%	0.6
SAMUEL, AUDWIN MILLARD			3	19		22	11%	\$6,100	15%	0.7
SANDERSON, AMY				1		1	0%	\$250	Did not report	
SCOTT, LINDSEY MARIE					1	1	3%	\$1,800	Did not report	
SMITH, BRUCE NEILL			12	5		17	12%	\$20,700	62%	0.2
TEMPLETON, MITCHELL WAYNE			6			6	5%	\$8,453	10%	0.5
TOMLINSON, AMY ELIZABETH			2	2		4	2%	\$2,800	30%	0.1
TURK, MATTHEW BRENT			1	3		4	2%	\$1,350	50%	0.0
VAN ZANDT, PHILLIP MICHAEL			155			155	121%	\$105,000	99%	1.2
VAZQUEZ, JOEL WEBB	23		14	12		49	16%	\$22,935	70%	0.2
VERNON, JONATHAN O'BRIEN				7		7	3%	\$1,975	Did not report	
VILLERY, SEAN CHRISTOPHER			162	2		164	127%	\$107,400	70%	1.8
WARE, KIMBERLY JANE	16					16	0%	\$3,075	30%	0.0
WEST, JOHN DAVID			8	9		17	10%	\$11,700	15%	0.7

Attorney Name	Juv. Cases Paid	Cap. Murder Cases Paid	Non-Capital Fel. Cases Paid	Misd. Cases Paid	Appeals Cases Paid	Total Cases Paid	# Atty's Req'd per WCG	Total Paid	% Time to I.D. in Jefferson County	# Atty's Req'd After Factoring Time for Other Activities
WIEDENFELD, CAROLYN DRAWHORN			1			1	1%	\$800	Did not report	
WILKERSON, WILLIAM MARCUS			7	6		13	8%	\$5,400	10%	0.8