



DALLAS COUNTY JUDGE CLAY LEWIS JENKINS

January 30, 2012

Joel Lieurance, Policy Monitor
Texas Indigent Defense Commission
P.O. Box 12066
Austin, Texas 78711-2066


Re: Policy Monitoring Visit

Dear Mr. Lieurance:

Attached is Dallas County's Consolidated Monitoring Response to the report from the Texas Indigent Defense Commission's recent monitoring visit. Also provided are the source response documents submitted by the Dallas County Criminal District Courts, Dallas County Criminal Courts, and the 304th District Juvenile Court.

We appreciate the assistance and cooperation of the Texas Indigent Defense Commission during this review process. Please contact me at 214-653-7949 if you have questions or need additional information. You may also direct questions to our criminal justice director, Ron Stretcher, at 469-385-1720.

Sincerely,


Honorable Clay Lewis Jenkins
Dallas County Judge
(attachments)

Dallas County Consolidated Monitoring Response

Transmittal of Request to Appointing Authority

Recommendation 1: The current process for transmitting requests for counsel from the non-participating municipalities (municipalities who are not part of the videoconferencing system) to the appointing authority is not enabling Dallas County to meet Article 1.051 requirements for making timely appointments of counsel. A process must be established that allows Dallas County to meet its statutory obligations.

Response: The best solution for Dallas County is to have all municipalities participate in the video conferencing system. Currently eleven of twenty-three municipalities are on line with video conferencing. This includes the city of Addison which just came on line and is also covering Highland Park. The cities of Combine, Farmers Branch, University Park, and Wylie are scheduled to come on line in the very near future.

Eight municipalities are not yet scheduled to begin video arraignments. (The cities of Cedar Hill, DeSoto, and Lancaster are counted as one municipality for these purposes as they share one jail facility, the Tri-cities jail). Unfortunately Dallas County is encountering resistance from some municipalities who do not want to participate in the video-conferencing system. Dallas County has no authority to force those municipalities to participate and may be requesting assistance from members of the Indigent Defense Commission in the near future to help persuade those municipalities to participate.

The “wheel” system currently used by Dallas County for the appointment of counsel does not permit the appointment of counsel or the tracking of a case until the arrested person has been before a Dallas County magistrate. If all municipalities do not participate in the video conferencing system, a new system, separate and apart from the AIS and OnBase systems currently in use, may have to be created in order to appoint counsel to persons arraigned while in municipal jails. In order to avoid the additional time and cost of creating a new computer system, Dallas County will continue to work towards a solution for the timely appointment of counsel and the receipt and tracking of election of counsel forms for those municipalities that refuse to participate in the video conferencing system.

Dallas County is in the process of amending the election of counsel form to provide more detailed information so that attorneys can be appointed for the appropriate level of offense. Once the forms are amended they will be distributed to all the municipalities in Dallas County and each municipality will be encouraged to use the standard form. Dallas County will continue to work towards identifying a single fax number where the election of counsel form can be sent for those cases where the arrested person is not arraigned by video conferencing. Once it is determined where the election of counsel forms are to be sent and who will monitor the receipt of the forms all municipalities will be notified.

Timely Appointment of Counsel

Misdemeanor Recommendation 1: Dallas County must ensure that counsel is appointed to misdemeanor defendants within one working day of request (plus 24 hours allowed to transfer the request to the appointing authority).

Response: The Judges agree to continue training Court Coordinators and encouraging upgrading of the AIS Wheel Appointment Program. The Courts estimate attaining 90% appointment levels. The Court Manager will continue to work with the Dallas County Sheriff's Department to ensure timely transmittal and receipt of Election of Counsel (EOC) request from Defendants so that timely appointments of counsel can be made.

Determinations of Indigence

Felony Recommendation 1: The felony courts must put in place a process that comports with Article 26.04(p) and may not deny indigence to those persons who previously qualified as indigent and who did not experience a material change in financial circumstances.

Response: In accordance with Article 26.04 (m) the district courts do not consider whether the defendant has posted bail or is capable of posting bail when determining whether a defendant is indigent, except to the extent that it reflects on the defendant's financial circumstances. To ensure compliance with Article 26.04 (p) the district courts will be implementing a pilot program in February, 2012, to improve the screening process for determining indigence. Additional personnel will be added under the supervision of the clerk's office to verify the information provided on the request for appointed counsel.

Misdemeanor Recommendation 2: Appointments of counsel are not being made if the arrestee posted bond. Per Article, 1.05(j), appointment of counsel may not be delayed because the defendant posted bond. Per Article 26.04(m), indigence determinations may not consider whether a defendant has posted bond, except to the extent that it reflects the defendant's financial circumstances.

Response: The Courts will appoint counsel whether a bond had been posted or not once the EOC is received. Upon determination that a Defendant's circumstances have changed and there is "finding of good cause" to re-evaluate the Defendant's indigence, the Courts will require more detailed financial information. As of now, the EOC does not provide detailed financial information.

Misdemeanor Recommendation 3: the misdemeanor courts must put in place a process that comports with Article 26.04(p) and may not deny indigence to those persons who previously qualified as indigent and who did not experience a material change in financial circumstances.

Response: The Courts will appoint counsel whether a bond had been posted or not once the EOC is received. Upon determination that a Defendant's circumstances have changed and there is "finding of good cause" to re-evaluate the Defendant's indigence, the Courts will require more

detailed financial information. As of now, the EOC does not provide detailed financial information.

Misdemeanor Recommendation 4: Per Article 26.04(j) (2), once an attorney is appointed to a case, the attorney cannot be replaced unless good cause is found.

Response: The Court Coordinators will be instructed to keep the same attorney as appointed to Indigent Defendants while incarcerated. The Court Coordinators are to notify the appointed counsel of the Defendant's presence in Court and/or initial Court setting. The Defendant will be instructed to wait for the previously appointed counsel to appear. If the previously appointed counsel declines the appointment or is no longer available, new counsel will be appointed that day.

Fair, Neutral, and Non-discriminatory Attorney Selection Process

Misdemeanor Recommendation 5: The misdemeanor courts must examine their methods of appointing counsel, in particular, with regard to non-Spanish speaking attorneys.

Response: The Misdemeanor Courts will re-examine our methods of appointing counsel, particularly with regard to non-Spanish speaking attorneys. The Courts will also follow the recommendation of the Commission and develop an Attorney Appointment Management Report for the Dallas County Misdemeanor Courts

Juvenile Recommendation 1: The 304th District Court must establish a method to more closely monitor its appointments, in particular, with regards to non-Spanish speaking attorneys.

Response: The 304th District Court has undertaken a complete review of all cases to which the top 10% of its' court appointed non-Spanish speaking attorneys were appointed. In the six month time period under discussion, (Jan-June 2011), six (6) attorneys (out of 64) received a total of 126 court appointments, which is 37% of the total appointments made to private attorneys. Of these 126 appointments, 51 of these cases were re-appointments. It has long been the policy of the Dallas County juvenile courts to re-appoint the same attorney to represent a child who has previously been in court and is back on new charges. This is in the best interest of the child, as the prior attorney has already had an opportunity to become acquainted with the child and his/her family, as well as with any on-going issues; substance abuse, truancy, mental health issues, etc. It is also in the court system's best interest as this policy promotes judicial economy in that the attorney does not need the time to "re-learn" the issues facing the child and family each time a child comes into our court, which in turn, means less time billed to the court, as well as promoting the child and family's confidence in the fairness of the juvenile court system. The only exceptions to this policy are if the attorney no longer accepts court appointments, if the family decides to hire an attorney or if the prior attorney has a conflict with representing the former client, for example, if the attorney already represents or has previously represented an accomplice to the same offense. It is the court's position that these re-appointments should not be bundled together with the court's appointments on new cases, as the court has no ability to control which children commit new offenses, and therefore which attorneys actually receive these re-appointments. The court will continue to follow the rotational

system of appointment for new misdemeanor and felony cases diligently in order to meet the TIDC requirements for a fair neutral and non-discriminatory process.

Action Plan: The 304th District Court will strictly follow its' misdemeanor and felony appointment list for all new cases filed in its' court. The court will select the top eligible attorney for a case and then move that attorney to the bottom of the list. The court will continue to track the overall court appointments by the appointment list. The court will minimize any variance in the selection of the attorney appointed based on the availability of the attorney. The court will continue to re-appoint the same attorney to represent a child who had a prior juvenile case with a court-appointed attorney. All current personnel involved in this process have made temporary adjustments as to this re-appointment procedure so as to comply with TIDC requirements. We will continue to track these numbers diligently in the best interest of the children and families served as well as our entire community.

Concerns of the Dallas County Criminal Courts regarding issues that factor into Court Appointments:

A Defendant who is appointed an attorney with the 24-hour period and post bond shortly after being arrested may not have provided adequate contact information for the appointed counsel to be able to follow-up and contact the Defendant after their release and prior to the initial appearance date.

The initial appearance date may be the first and the only time the Appointed Attorney can communicate with the Defendant.

When the Appointed Attorney accepts the appointment once the Defendant is incarcerated, but fails to appear or respond to the court coordinators' attempts to contact him/her upon the Defendant first appearing in Court after posting bond, new counsel must be appointed. This new counsel is often an attorney who can be found in the Courthouse. Sending the Defendant away because the next available attorney on the Wheel cannot be in Court at that time, puts the Defendant at risk of not returning, a longer waiting period to speak with their attorney and not getting a fast resolution to their case.

Although the Misdemeanor Courts each have at least one Assistance Public Defender and each PD is limited to 100 new cases per month, the financial cost to the Courts for providing Court Appointed Attorneys to Defendants that have posted bond within the 24-hour period is concerning. The Appointed Attorney who makes contact with a Defendant, even if the Defendant later hires private counsel, has to be paid for work done on the case prior to private counsel being retained.

Ron Stretcher

From: Dana Wrisner
Sent: Tuesday, January 03, 2012 12:23 PM
To: Ron Stretcher
Cc: Don Adams; Kerry Young; Diana Grafton
Subject: FW: Response to Indigent Defense

FYI:

From: Don Adams
Sent: Tuesday, December 20, 2011 8:15 AM
To: Clay Jenkins
Cc: Kerry Young; Dana Wrisner
Subject: Response to Indigent Defense

Judge Jenkins,

Attached is the response of the Criminal District Courts to the concerns raised in the November 18, 2011, report from the Texas Indigent Defense Commission. The Commission requested that a written response be provided by December 21, 2011, to wit:

Determinations of Indigence

Felony Recommendation 1: The felony courts must put in place a process that comports with Article 26.04(p) and may not deny indigence to those persons who previously qualified as indigent and who did not experience a material change in financial circumstances.

Response: In accordance with Article 26.04 (m) the district courts do not consider whether the defendant has posted bail or is capable of posting bail when determining whether a defendant is indigent, except to the extent that it reflects on the defendant's financial circumstances. To ensure compliance with Article 26.04 (p) the district courts will be implementing a pilot program in February, 2012, to improve the screening process for determining indigence. Additional personnel will be added under the supervision of the clerk's office to verify the information provided on the request for appointed counsel.

Transmitting Requests for Counsel

Recommendation: The current process for transmitting requests for counsel from the non-participating municipalities (municipalities who are not part of the videoconferencing system) to the appointing authority is not enabling Dallas County to meet Article 1.051 requirements for making timely appointments of counsel. A process must be established that allows Dallas County to meet its statutory obligations.

Response: The best solution for Dallas County is to have all municipalities participate in the video conferencing system. Currently eleven of twenty-three municipalities are on line with video conferencing. This includes the city of Addison which just came on line and is also covering Highland

Park. The cities of Combine, Farmers Branch, University Park, and Wylie are scheduled to come on line in the very near future.

Eight municipalities are not yet scheduled to begin video arraignments. (The cities of Cedar Hill, DeSoto, and Lancaster are counted as one municipality for these purposes as they share one jail facility, the Tri-cities jail). Unfortunately Dallas County is encountering resistance from some municipalities who do not want to participate in the video-conferencing system. Dallas County has no authority to force those municipalities to participate and may be requesting assistance from members of the Indigent Defense Commission in the near future to help persuade those municipalities to participate.

The “wheel” system currently used by Dallas County for the appointment of counsel does not permit the appointment of counsel or the tracking of a case until the arrested person has been before a Dallas County magistrate. If all municipalities do not participate in the video conferencing system, a new system, separate and apart from the AIS and OnBase systems currently in use, may have to be created in order to appoint counsel to persons arraigned while in municipal jails. In order to avoid the additional time and cost of creating a new computer system, Dallas County will continue to work towards a solution for the timely appointment of counsel and the receipt and tracking of election of counsel forms for those municipalities that refuse to participate in the video conferencing system.

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DALLAS COUNTY
COUNTY CRIMINAL COURT MANAGER
PATRICIA JOHNSON

The Honorable County Judge Clay Jenkins
Dallas County
411 Elm Street, 2nd Floor
Dallas, TX 75202

The Honorable Judge Angela King
Statutory County Criminal Court Presiding Judge
Dallas County
Frank Crowley Courthouse
133 N. Riverfront Blvd
Dallas, TX 75207-4399

December 15, 2011

*Re: TIDC Policy Monitoring Visit Response from the County
Criminal Courts and County Criminal Courts of Appeals*

Dear Judge Jenkins:

The Dallas County Misdemeanor Courts have comprised the following responses to the TIDC's Report and submit them for review and inclusion in your response to the Report. It is our intent to address the concerns of the Commission immediately to ensure swift resolution of the issues pertaining to the Misdemeanor Courts.

Determinations of Indigence and Timely Appointment of Counsel

• **Transmitting Requests for Counsel to the Appointing Authority**

The Judges agree that Chief Magistrate Judge Terri McVea will continue to facilitate use of video conferencing equipment with the Local

Enforcement Agencies (LEA). Furthermore, Election of Counsel (EOC), received from LEAs will continue to be received through the Dallas County Sheriff's Department. While several LEAs have refused to install and implement video conferencing equipment, we agree efforts should be made to move this process forward.

- **Misdemeanor Appointments**

The Judges agree to continue training Court Coordinators and encouraging upgrading of the AIS Wheel Appointment Program. The Courts estimate attaining 90% appointment levels. The Court Manager will continue to work with the Dallas County Sheriff's Department to ensure timely transmittal and receipt of Election of Counsel (EOC) requests from Defendants so that timely appointments of counsel can be made.

- **In-Court Appointment**

The Court Coordinators will be instructed to keep the same attorney as appointed to Indigent Defendants while incarcerated. The Court Coordinators are to notify the appointed counsel of the Defendant's presence in Court and/or initial Court setting. The Defendant will be instructed to wait for the previously appointed counsel to appear. If the previously appointed counsel declines the appointment or is no longer available, new counsel will be appointed that day.

- **Determination of Indigence**

The Courts will appoint counsel whether a bond has been posted or not once the EOC is received. Upon determination that a Defendant's circumstances have changed and there is "finding of good cause" to re-evaluate the Defendant's indigence, the Courts will require more detailed financial information. As of now, the EOC does not provide detailed financial information.

- **Appointment Distributions for Each Appointment Wheel – Misdemeanor Cases**

The Misdemeanor Courts will re-examine our methods of appointing counsel, particularly with regard to non-Spanish speaking attorneys. The

Courts will also follow the recommendation of the Commission and develop an Attorney Appointment Management Report for the Dallas County Misdemeanor Courts.

Concerns regarding issues that factor into Court Appointments:

A Defendant who is appointed an attorney with the 24-hour period and post bond shortly after being arrested may not have provided adequate contact information for the appointed counsel to be able to follow-up and contact the Defendant after their release and prior to the initial appearance date.


The initial appearance date may be the first and the only time the Appointed Attorney can communicate with the Defendant.


When the Appointed Attorney accepts the appointment once the Defendant is incarcerated, but fails to appear or respond to the court coordinators attempts to contact him/her upon the Defendant first appearing in Court after posting bond, new counsel must be appointed. This new counsel is often an attorney who can be found in the Courthouse. Sending the Defendant away because the next available attorney on the Wheel cannot be in Court at that time, puts the Defendant at risk of not returning, a longer waiting period to speak with their attorney and not getting a fast resolution to the their case.

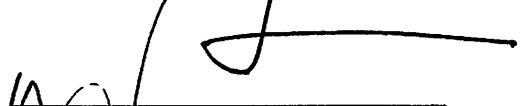
Although the twelve Misdemeanor Courts each have at least one Assistant Public Defender and each PD is limited to 100 new cases per month, the financial cost to the Courts for providing Court Appointed Attorneys to Defendants that have posted bond within the 24-hour period is concerning. The Appointed Attorney who makes contact with a Defendant, even if the Defendant later hires private counsel, has to be paid for work done on the case prior to private counsel being retained.


Respectfully Submitted,
Judge Angela King
Statutory County Criminal Court Presiding Judge

SIGNED AND AGREED BY:

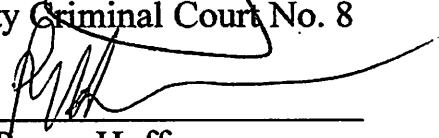

Hon. Angela King, Presiding Judge
County Criminal Court No. 6


Hon. Elizabeth Crowder
County Criminal Court No. 7


Hon. Dan Patterson
County Criminal Court No. 1


Hon. Tina Yoo
County Criminal Court No. 8

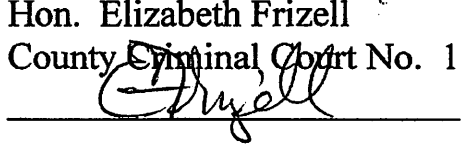

Hon. Julia Hayes
County Criminal Court No. 2

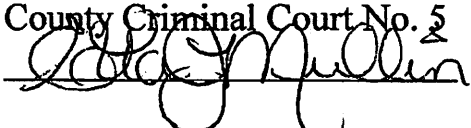

Hon. Peggy Hoffman
County Criminal Court No. 9


Hon. Douglas Skemp
County Criminal Court No. 3


Hon. Roberto Cañas Jr.
County Criminal Court No. 10


Hon. Teresa Tolle
County Criminal Court No. 4


Hon. Elizabeth Frizell
County Criminal Court No. 11


Hon. Etta J. Mullin
County Criminal Court No. 5


Hon. Kristin Wade
County Criminal Court of Appeals No. 1


Hon. Jeffrey Rosenfield
County Criminal Court of Appeals No. 2

12/15/11

January 27, 2012

Mr. Joel Lieurance
Policy Monitor
Texas Indigent Defense Commission
P.O. Box 12066
Austin, Texas 78711-2066

Re: 304th District Court Response and Action Plan

Dear Mr. Lieurance:

The 304th District Court has undertaken a complete review of all cases to which the top 10% of its' court appointed non-Spanish speaking attorneys were appointed. In the six month time period under discussion, (Jan-June 2011), six (6) attorneys (out of 64) received a total of 126 court appointments, which is 37% of the total appointments made to private attorneys. Of these 126 appointments, 51 of these cases were re-appointments. It has long been the policy of the Dallas County juvenile courts to re-appoint the same attorney to represent a child who has previously been in court and is back on new charges. This is in the best interest of the child, as the prior attorney has already had an opportunity to become acquainted with the child and his/her family, as well as with any on-going issues; substance abuse, truancy, mental health issues, etc. It is also in the court system's best interest as this policy promotes judicial economy in that the attorney does not need the time to "re-learn" the issues facing the child and family each time a child comes into our court, which in turn, means less time billed to the court, as well as promoting the child and family's confidence in the fairness of the juvenile court system. The only exceptions to this policy are if the attorney no longer accepts court appointments, if the family decides to hire an attorney or if the prior attorney has a conflict with representing the former client, for example, if the attorney already represents or has previously represented an accomplice to the same offense. It is the court's position that these re-appointments should not be bundled together with the court's appointments on new cases, as the court has no ability to control which children commit new offenses, and therefore which attorneys actually receive these re-appointments. The court will continue to follow the rotational system of appointment for new misdemeanor and felony cases diligently in order to meet the TIDC requirements for a fair neutral and non-discriminatory process.

Mr. Joel Lieurance

January 27, 2012

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Action Plan

The 304th District Court will strictly follow its' misdemeanor and felony appointment list for all new cases filed in its' court. The court will select the top eligible attorney for a case and then move that attorney to the bottom of the list. The court will continue to track the overall court appointments by the appointment list. The court will minimize any variance in the selection of the attorney appointed based on the availability of the attorney. The court will continue to re-appoint the same attorney to represent a child who had a prior juvenile case with a court-appointed attorney. All current personnel involved in this process have made temporary adjustments as to this re-appointment procedure so as to comply with TIDC requirements. We will continue to track these numbers diligently in the best interest of the children and families served as well as our entire community.

Respectfully,

HON. WILLIAM A. MAZUR, JR.

WAM/olt

cc: The Honorable Clay Jenkins – Dallas County Judge
The Honorable Don Adams – Presiding District Judge