



TEXAS INDIGENT DEFENSE COMMISSION

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Presiding Judge, Court of Criminal Appeals

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Mr. Anthony Odiorne
Mr. Don Hase

Executive Director:

James D. Bethke

March 31, 2015

The Honorable Jay T. Elliott
Constitutional County Judge
Falls County Courthouse
125 Bridge Street Room #203
P.O. Box 458
Marlin, TX 76661

Re: Falls County Fiscal Monitoring Visit

Dear Judge Elliott:

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

The objective of the review was to determine if Falls 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 Falls 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

Falls County, Texas

FY 2013 Indigent Defense Expenses

Final Report

March 31, 2015

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EXECUTIVE SUMMARY

Falls County on-site fiscal monitoring visit was conducted on September 8th and 11th of 2014. Continued review was extended offsite. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants.

The expenditure period of October 1, 2012 to September 30, 2013 (FY 2013) was reviewed during the fiscal monitoring visit.

Summary of Findings

- Payments to attorneys do not appear to be made in accordance with the published fee schedule as required by Code of Criminal Procedure (CCP) Article 26.05.
- Attorney fee vouchers reviewed did not meet the statutory requirements of CCP Article 26.05 (c).

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 provided by the Falls County Auditor's Office.

Methodology

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

- random samples of paid attorney fees, expert witnesses, licensed investigations, and other direct litigation expenses for verification;
- general ledger transactions, invoices, and additional accounting support prepared by the Falls County Auditor's Office;
- IDER and attorney fee schedule;
- public appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- the county's local indigent defense plan.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Falls County was formed in 1850 by state legislative action taking parts of Limestone and Milam counties. It was named after the falls of the Brazos River. The County is part of the Waco, Texas Metropolitan Statistical Area. Falls County occupies an area of 774 square miles and serves an estimated population of 17,965. The County is a political subdivision of the State of Texas. Neighboring counties are Limestone, Robertson, Bell, McLennan and Milam.

Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82nd Texas Legislature changed the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council and administratively attached to the Office of Court Administration (OCA).

The Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the constitution and state law.

The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and 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. Falls County met the formula grant eligibility requirements and was awarded \$19,160 for FY 2013.

Discretionary Grant

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

Other Related Issues

During the desk review of the FY 2013 IDER, it was noted that the number of cases paid reported in the IDER combined with the court clerk’s reports to the Office of Court Administration show that counsel was appointed in 60.27% of the misdemeanor cases when compared to the statewide percentage rate at 41.59%. Cases added information was not available to report the felony and juvenile appointment rates.

FINDINGS AND RECOMMENDATIONS:

Finding One

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

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

(c) Each fee schedule adopted shall state reasonable fixed rates, or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings...”

Of the thirty vouchers reviewed three (3) appeared to be paid based on the published fee schedule. The published fee schedule provided a set fee amount to be paid per in court appearance and/or a minimum to maximum hourly rate based on level of case and whether the time was spent in court or out of court. The published fee schedule also included a maximum amount that a case could be paid without court authorization. However: the fee schedule did not outline a flat fee amount per case with variations due to other considerations and this is what appears to be the current practice. Also the hourly rate approved on two (2) vouchers were higher than the maximum outlined in the fee schedule.

Recommendation:

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

Falls County Action Plan

The Judge has amended current fee schedule and the current fee schedule is in place.

Contact person(s): Rosann Allen, Falls County Auditor

Completion date: 02/10/2015

Finding Two

Twenty-four of the thirty attorney fee vouchers reviewed did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05 (c) because the vouchers did not request an amount to be paid by the attorney. CCP Article 26.05 (c) reads in part "...No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. ..."

. In addition to the attorney not requesting an amount on 24 attorney fee vouchers, one voucher did not itemize the services performed and two vouchers were court orders in matters of a juvenile case but did not have an invoice submitted by the attorney listing the services provided.

Recommendation:

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

Falls County Action Plan

The Judge has visited with all defense attorneys regarding this information and compliance with the rules.

Contact person(s): **Rosann Allen, Falls County Auditor**

Completion date: **02/10/2015**

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

FALLS COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2011	2012	2013
Population Estimate	17,866	17,918	17,965
Juvenile Assigned Counsel	\$8,050.00	\$12,200.00	\$12,950.00
Capital Murder	\$28,915.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$80,125.00	\$74,415.00	\$75,450.00
Adult Misdemeanor Assigned Counsel	\$38,442.50	\$42,600.00	\$56,640.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$7,386.00	\$10,558.60	\$4,278.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Payments Made and No charges Filed - Adult	\$8,350.00	N/A	N/A
Licensed Investigation	\$979.00	\$0.00	\$0.00
Expert Witness	\$1,600.00	\$2,361.40	\$1,800.00
Other Direct Litigation	\$14,453.10	\$11,079.27	\$7,756.18
Total Court Expenditures	\$188,300.60	\$153,214.27	\$158,874.18
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$0.00	\$0.00	\$7,421.00
Total Court and Administrative Expenditures	\$188,300.60	\$153,214.27	\$166,295.18
Formula Grant Disbursement	\$14,191.00	\$12,663.00	\$19,160.00
Equalization Disbursement		\$3,917.00	
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$9,370.01	\$13,935.36	\$12,527.02
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	351	345	404

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Falls County				
Year	2011	2012	2013	Texas 2013
Population (Non-Census years are estimates)	17,866	17,918	17,965	26,251,278
Felony Charges Added (from OCA report)	200	132	0	272,990
Felony Cases Paid	149	132	132	192,045
% Felony Charges Defended with Appointed Counsel	74.50%	100.00%		70.35%
Felony Trial Court-Attorney Fees	\$109,040.00	\$74,415.00	\$75,450.00	\$96,567,898.10
Total Felony Court Expenditures	\$125,749.85	\$87,401.06	\$84,811.86	\$109,898,235.77
Misdemeanor Charges Added (from OCA report)	326	190	370	549,030
Misdemeanor Cases Paid	148	167	223	228,357
% Misdemeanor Charges Defended with Appointed Counsel	45.40%	87.89%	60.27%	41.59%
Misdemeanor Trial Court Attorney Fees	\$38,442.50	\$42,600.00	\$56,640.00	\$36,880,978.23
Total Misdemeanor Court Expenditures	\$38,442.50	\$42,600.00	\$56,640.00	\$37,705,538.29
Juvenile Charges Added (from OCA report)	11	25	0	33,504
Juvenile Cases Paid	31	38	45	48,114
Juvenile Attorney Fees	\$8,050.00	\$12,200.00	\$12,950.00	\$10,468,295.88
Total Juvenile Expenditures	\$8,050.00	\$12,200.00	\$12,950.00	\$11,196,725.86
Total Attorney Fees	\$171,268.50	\$139,773.60	\$149,318.00	\$149,496,691.36
Total ID Expenditures	\$188,300.60	\$153,214.27	\$166,295.18	\$217,068,685.09
Increase In Total Expenditures over Baseline	111.61%	72.18%	86.88%	144.69%
Total ID Expenditures per Population	\$10.54	\$8.55	\$9.26	\$8.27
Commission Formula Grant Disbursement	\$14,191.00	\$12,663.00	\$19,160.00	\$19,897,469.00
Commission Equalization Grant Award		\$3,917.00		

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; and
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- IDER and attorney fee schedule;
- public appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- the county's local indigent defense plan.

Criteria

- Uniform Grant Management Standards
- Texas Government Code, Section 79.036. Indigent Defense Information
- Texas Government Code, Section 79.037. Technical Support; Grants
- Code of Criminal Procedures Art 26.04 Procedures for Appointing Counsel
- Code of Criminal Procedures Art 26.05 Compensation of Counsel Appointed to Defend
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.1
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.2
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter B Definitions
- FY2013 Indigent Defense Expenditure Report Manual found at
- http://www.txcourts.gov/tidc/pdf/FY2013_IDER_ManualFinal.pdf

APPENDIX C – DISTRIBUTION LIST

The Honorable Robert Miller Stem
82nd Judicial District Court
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Marlin, TX 76661-0075

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Falls County Auditor
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