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JEFF R. BRANICK
County Judge

August 13, 2020

Mr. Joel Lieurance via email: JLieurance@tidc.texas.gov

TIDC

Re: Jefferson County Response to the Texas Indigent Defense Commission June, 2020 Follow Up Review

Joel,

Find attached the report of Judge John Stevens which I trust will satisfy your requirements. Should you require more, just let me know and thanks,

A handwritten signature in blue ink, appearing to read "Jeff Branick", is written over a horizontal line.

Jeff R. Branick, County Judge



CHAMBERS OF
JUDGE JOHN B. STEVENS, JR.
CRIMINAL DISTRICT COURT
JEFFERSON COUNTY COURTHOUSE

Judge Jeff Branick
Jefferson County, Texas, County Judge
1001 Pearl Street
Beaumont, Texas 77701

RE: Response to the Texas Indigent Defense Commission's June, 2020 Follow-Up Review of Jefferson County's Indigent Defense Systems

Dear Judge Branick:

The Texas Indigent Defense Commission (TIDC) representatives conducted an on-site visit to Jefferson County on April 1-3, 2019, to follow up on recommendations to the previous TIDC 2014 Policy Monitoring Report. Several issues were deemed by TIDC as "successfully addressed" by Jefferson County.

Four (4) matters required additional improvement according to TIDC. These include: (1) conducting prompt and accurate initial appearance-arraignment Article 15.17 proceedings; (2) determining indigence according to standards directed by the indigent defense plan; (3) promptly appointing legal counsel for indigent defendants; and (4) ensuring that maximum caseload limits of contract attorneys are followed. All of these matters have been resolved by the Jefferson County Criminal Courts as described herein.

I.

First, as to the TIDC report's "Requirement 1, Prompt and Accurate Magistrate Proceedings," under "Recommendation 3," the only item not earlier successfully addressed by Jefferson County related to the completion of indigent request forms at the Article 15.17(a) initial appearance and arraignment hearings. This issue has been successfully resolved in the following manner. When a criminal defendant is booked into county jail and claims indigence, the Affidavit for Indigence will be completed prior to the promptly occurring Article 15.17 magistrate hearing.

Since June 20, 2020, based upon written directive of Lt. Minter of the Jefferson County Sheriff's Office, County Jail officials have directed that jail staff provide each inmate the Affidavit of Indigence to complete when arrestees are being booked into jail. The jail staff is required to assist arrestees in completing the affidavit if necessary. If arrestees are unable to complete the affidavit due to intoxication, combativeness, or any other reason, such inability is to be documented on the face of the affidavit.

If the Affidavit of Indigence is not completed, the magistrate at the Article 15.17 hearing will assist the defendant in completing and signing the affidavit, or note for the record the reason(s) why the affidavit was not completed. Retired Judge Mickey Shuffield is the Senior Magistrate official for Article 15.17 hearings for Jefferson County and has directed all magistrates to follow this procedure.

It is important to note that the Jefferson County Criminal Courts have adopted for Jefferson County use the same Affidavit of Indigence found on the TIDC website under "Model Forms for Adult Indigent Defendants." It is used in

each felony and misdemeanor case where a Jefferson County criminal defendant requests a court appointed attorney.

II.

Secondly, under TIDC June, 2020 report, “Requirement 2, Recommendations 4 and 5,” of the report, the TIDC found that in some cases when a jailed defendant is declared indigent and subsequently released on bond, such defendants may automatically jeopardize their indigent appointed legal assistance because they posted bail. The TIDC additionally noted that its 2019 observations and interviews during their on-site review observed the Drug Impact Court “routinely conducts redetermination of indigence after case filing...and is expected to attempt to retain counsel...even though the defendant has already been determined to be indigent.”

It is the policy in Jefferson County that defendants declared indigent continue to be presumed indigent unless properly deemed otherwise. Current criminal court judges are unaware of indigent defendants being deemed otherwise unless by judicial determination upon objective criteria of material change in financial circumstances of defendants

As to exceptions to this county standard which may have occurred in the Drug Impact Court, it should be noted that the long-time, illustrious retired judge presiding in that court passed away last year and thus is unable to defend or explain any such aberrations to the county policy standards. The Drug Impact Court, as well as all Jefferson County Criminal Courts, shall follow the standards of indigence as set out in policy and law.

III.

As to the third issue, which is described in the TIDC June 2020 report as “Requirement 4, Recommendations 7, 8 and 9,” both misdemeanor courts have made the necessary adjustments in procedures and protocols to address TIDC recommendations.

In response to “Recommendation 7,” under “Requirement 4: Appoint Counsel Promptly,” the misdemeanor courts have put in place a method to punctually rule upon defendants’ requests for counsel. If an arrestee is before a magistrate at the jail and a request is made for counsel, the magistrate shall rule upon that request immediately. If a defendant did not make a request for counsel when arrested but is now before the misdemeanor judge requesting counsel, then the presiding misdemeanor court judge will thereupon rule upon request of counsel.

In response to “Recommendation 8,” under “Requirement 4,” in addition to the method for prompt appointments of counsel, defendants will be given a reasonable opportunity to retain counsel upon request. If defendants who fail to retain counsel do not qualify for court appointed counsel and request to waive counsel, such defendants will not be allowed to speak to the prosecuting attorney until he or she competently, knowingly, intelligently, and voluntarily waives their right to counsel, in writing. The attached waivers used in this situation are the same waivers found on the TDIC website under Policies and Procedures in the Model Forms and Procedures section.

In response to “Recommendation 9,” under “Requirement 4,” the following policy is now in effect: “If a defendant has made bond and is before the misdemeanor judge requesting counsel, the Court will rule upon such request no

later than the end of the first working day, after the date on which the Court received the request.” [CCP 1.051(c)(2)]. The Misdemeanor Court Judges have immediately placed this rule into effect as well as the other policy changes described in part III hereinabove.

IV.

As to the fourth issue referred in the June 2020 TDIC report as “Requirement 5: Attorney Selection Process,” Jefferson County has taken steps to ensure the maximum annual caseload limits for contract indigent defense attorneys are not exceeded.

The contractual annual caseload limitations for Jefferson County is 150 felony cases. This amount was chosen based upon the 2007 report by the American Council of Chief Defenders (ACCD) Statement on Caseloads and Workloads, which reaffirmed a 1973 report by the National Advisory Commission on Criminal Justice Standards (NAC) which expressed similar recommendations.

Most recently, on July 24, 2020, the American Bar Association Standing Committee on Legal Aid and Indigent Defendants (ABA SCLAID) published The Indiana Project, which analyzed the Indiana Public Defense System and Attorney Workload Standards. The Indiana Public Defender Commission engaged the ABA SCLAID to analyze public defense workloads and provide a final report. It used a research technology called “The Delphi Method.” Introduced in 1962 by Rand Corporation researchers, the Delphi method utilizes opinions of experts to generate reliable conclusions. Deemed effective by experts, the Delphi method is used across a wide array of healthcare, education, information, transportation, and engineering industries. In addition to forecasting, it has assisted in program

planning, needs assessment, policy determination and resource utilization for the National Association of Court Management and the National Center for State Courts. The Delphi method has been used for analyzing public defender workload studies for Michigan, Louisiana, Rhode Island and Colorado.

Although each study has its unique circumstances and data, The Indiana Project results deemed the annual caseload for defense attorneys to competently handle low, mid, and high level felonies, excluding murder cases, equaled 175 cases.

The types of cases Jefferson County Contract Defenders handle are low, mid and high level non-murder cases as in The Indiana Project study. They are almost exclusively non-trials consisting of plea dispositions, dismissals, or transfer of the case to the rotation list of Defense Attorneys upon the defendant insisting on a trial and requesting or insisting the contract defender be replaced. Very few cases are tried to a jury by the Contract Defender.

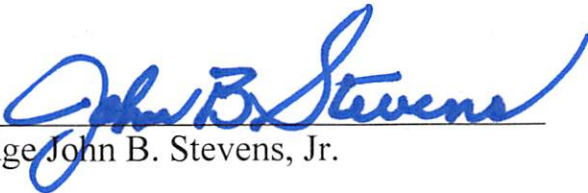
Although some Contract Defenders exceeded the annual 150 contractual limit of cases, only four (4) slightly exceeded the limit, and all but one were less than The Indiana Project results for comparable types of cases. Except for one excessive caseload, the others can be attributed to case appointments at the end of the fiscal year, which exceeded the maximum annual limit during the final reporting month. Jefferson County Criminal Courts are considering increasing the maximum caseloads for contractual defenders to 175.

The Criminal District Court legal assistant assigned to handle the indigent defense records and documentation is now directed to alert the Criminal Courts whenever the maximum caseload limit is approached by any contract indigent

defense attorney to ensure the current maximum caseloads of 150 are not exceeded.

This letter of response to the TIDC Findings and Recommendations in its June, 2020 Review of Jefferson County's Indigent Representation System is a collaborative product of the Criminal Court Judge for Jefferson County. All four (4) Criminal Court Judges have reviewed this letter, agree with the contents, and accept responsibility for ensuring the representations made herein are fulfilled.

Respectfully Submitted,

A handwritten signature in blue ink that reads "John B. Stevens". The signature is written in a cursive style and is positioned above a horizontal line.

Judge John B. Stevens, Jr.

John D. Johnson

Cause Number: _____

IN THE [INSERT COURT]
[INSERT COUNTY] COUNTY, TEXAS

**WAIVER OF COUNSEL FOR PURPOSES OF ENTERING
A GUILTY PLEA OR PROCEEDING TO TRIAL**

I have been advised of the nature of the charges against me and the dangers and disadvantages of self-representation. My waiver is voluntarily and intelligently made. Furthermore,

I have been advised this _____ day of _____, 20 ____, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel.

Defendant

Date: _____

I have determined that this waiver is voluntarily and intelligently made.

Judge Presiding

Date: _____

ATTACHMENT

Cause Number: _____

IN THE [INSERT COURT]
[INSERT COUNTY] COUNTY, TEXAS

**JUDGE'S EXPLANATION OF RIGHTS TO DEFENDANTS
WITHOUT ATTORNEY**

As a defendant in a criminal case, you have three options:

1. You may hire an attorney;
2. If you do not have enough money to hire an attorney, you may request an attorney be appointed to represent you;
3. You may represent yourself.

If you want an attorney to represent you and have enough money to hire an attorney, the case will be reset to give you time to do so.

If you want an attorney and do not have the money to hire one, you will need to fill out a financial questionnaire so that the proper person can determine whether or not to appoint an attorney to represent you.

You may not speak to the prosecutor about your case unless you sign a written waiver of your right to be represented by an attorney.

Be aware that there are dangers to self-representation. Waiving your right to an attorney and representing yourself may result in a worse outcome for you and your case, including the loss of significant legal rights and opportunities relating to military service, possession of a firearm, housing and public benefits, child custody, immigration status for non-citizens, and employment.

If you choose to proceed without an attorney, you may change your mind at any time and may request counsel from the Court.

Judge Presiding

DEFENDANT'S CHOICE [mark initials next to only ONE choice]

_____ I want to reset this case to hire my own attorney.

_____ I have hired an attorney, whose name is: _____

_____ I want to apply for court-appointed counsel.

_____ I have a court-appointed attorney, whose name is: _____

_____ I want to waive my right to an attorney and represent myself.

Defendant: _____ Date: _____

ATTACHMENT