

TEXAS TASK FORCE ON INDIGENT DEFENSE

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CHAIR:
THE HONORABLE SHARON KELLER
Presiding Judge, Court of Criminal Appeals

DIRECTOR:
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THE HONORABLE OLEN UNDERWOOD
Presiding Judge, 2nd Administrative Judicial Region

December 27, 2010

The Honorable Bill Stoudt
Constitutional County Court Judge
Gregg County Courthouse
101 E. Methvin Ste. 300
Longview, Texas 75601

Re: Gregg County Fiscal Monitoring Visit

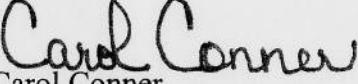
Dear Judge Stoudt:

A monitoring visit of your county was conducted on September 21-22, 2010. The financial aspects of the county were monitored to adequately review fiscal records and documentation to ensure compliance with the Task Force on Indigent Defense grant.

A copy of the final monitoring report including your county response is enclosed. The Task Force on Indigent Defense would like to thank county officials and employees for their assistance and courtesy during the course of the monitoring visit. We greatly appreciated the time and cooperation of Gregg County's staff.

If you have any questions or need further clarification, do not hesitate to contact me at (512) 936-7561.

Sincerely,


Carol Conner
Fiscal Monitor

cc: The Honorable David Brabham, Local Administrative District Court Judge
The Honorable Rebecca Simpson, Local Administrative Statutory County Court Judge
The Honorable Alfonso Charles, 124th District Court Judge
The Honorable Vincent Dulweber, County Court-at-Law Judge No. 2
Ms. Laurie Woloszyn, County Auditor
Mr. Bryan Wilson, Grants Administrator, Task Force on Indigent Defense
Mr. Wesley Shackelford, Deputy Director, Task Force on Indigent Defense
Mr. James D. Bethke, Director, Task Force on Indigent Defense



TEXAS TASK FORCE ON INDIGENT DEFENSE

Fiscal Monitoring of Indigent Defense Expenses

**Gregg County, Texas
on
September 21-22, 2010**

**Final Report
December 27, 2010**

TABLE OF CONTENTS

I. INTRODUCTION4
 Task Force Background.....5
 Objectives5
 Scope5
 Methodology.....5
 Summary of Findings6

II. INDIGENT DEFENSE EXPENDITURE REPORT.....6
 Indigent Defense Expenditure Reporting6

III. ACCOUNTING OPERATIONS6
 Accounting Procedures.....6

IV. INDIGENT DEFENSE PAID VOUCHERS7
 A. Summary of Attorney Fee Payments.....7
 1. Fee Schedule.....7
 2. Reviewed Attorney Fee Vouchers.....7
 3. Summary of Investigations, Experts, and Other Direct Litigation Expenses.....8
 B. Public Appointment List.....10
 1. Approval of Qualified Attorneys by the Judges10
 2. Applied for Public Appointment List10
 3. Continuing Legal Education (CLE) Requirements11

V. PROCESS-IMPROVEMENT RECOMMENDATION12
 Internal Reviews12

VI. SUMMARY12
 General Comments12

APPENDICES:
 A. Section 71.0351, Texas Government Code13
 B. Section 71.062, Texas Government Code.....14
 C. Financial Management, UGMS15
 D. Article 26.04, Code of Criminal Procedure16
 E. Article 26.05, Code of Criminal Procedure18
 F. Chapter 174, Rule, 174.1, Texas Administrative Code.....20

I. INTRODUCTION

Gregg County on-site fiscal monitoring visit was conducted on September 21-22, 2010. Jennifer Willyard, grant program specialist, assisted the fiscal monitor in reviewing financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Task Force grant.

Gregg County is located in northeastern Texas with an estimated population of 118,341. Longview, the county's largest town, is 130 miles east of Dallas and 65 miles west of Shreveport, Louisiana.

Gregg County's criminal court system is comprised of two statutory county courts and two district courts hearing criminal cases. The statutory county courts manage juvenile cases. In 2009, the county received \$58,667 in formula grant funds. The county also received \$19,649 in equalization disbursement for the increased cost of indigent defense services. Additionally, the county collected \$157,523 for reimbursement of attorney fees from defendants.

Gregg County Indigent Defense Expenditures			
Expenditures	2007	2008	2009
Population Estimate	119,208	118,341	118,341
Juvenile Assigned Counsel	\$25,736	\$29,143	\$22,974
Juvenile Assigned Appeals	0	0	\$3,575
Adult Misdemeanor Assigned Counsel	\$206,896	\$261,698	\$304,471
Adult Felony Assigned Counsel	\$499,742	\$403,181	\$538,274
Capital Murder	0	0	\$18,000
Adult Felony Assigned Counsel Appeals	\$28,969	\$50,866	\$30,727
Licensed Investigation	\$10,254	0	0
Expert Witness	\$5,000	0	\$32,546
Other Direct Litigation	\$60,925	\$91,988	\$101,219
Total Indigent Defense Expenditures (for Public Defense)	\$837,521	\$836,877	\$1,051,786
Formula Grant Disbursement	\$59,224	\$58,614	\$58,667
Equalization Disbursement	n/a	\$4,996	\$19,649
Reimbursement of Attorney Fees	\$166,249	\$154,661	\$157,523
Total Assigned Counsel Cases	2,139	2,329	2,710

Source: Task Force on Indigent Defense records

Task Force Background

In January 2002, the 77th Texas Legislature established the Task Force on Indigent Defense (Task Force). The mission of the Task Force is to improve the delivery of indigent defense services through fiscal assistance and professional support to State, local judicial, county, and municipal officials. The purpose of the Task Force 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. As a result of the legislative requirement, the Task Force promulgated Section 173.401(a), Texas Administrative Code, which provides, "the Task Force 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."

Objectives

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 of fiscal departments relating to indigent defense services.
- provide recommendations regarding operational efficiency.
- assist with any questions or concerns on the indigent defense program requirements.

Scope

The scope of review was limited to determine the adequacy and propriety of documentation supporting expenditures against the grant and ensure that payments to vendors were made in accordance with applicable laws, regulations, and provisions of the grant during fiscal year 2009. Reviewed records located in the Gregg County courthouse (county auditor's office) and Gregg County Community Supervision and Corrections Department.

Methodology

To accomplish the objectives, the fiscal monitor met with first assistant county auditor and deputy director. The fiscal monitor reviewed:

- random samples of paid attorney fee vouchers, licensed investigations, expert witnesses, other direct litigation for verification of expenses;
- general ledger transactions and invoices;
- indigent defense expenditure report and attorney fee schedule;
- public appointment list, and attorney criminal continuing legal education training; and
- county's local indigent defense plan.

The expenditure period of October 1, 2008 to September 30, 2009 (FY 2009) was reviewed during the fiscal monitoring visit.

Gregg County's Criminal Courts			
Courts	Courts		Percent Sampled
	Total	Reviewed	
County Courts-at-Law	2	2	100%
District Courts	2	2	100%

Percent Sampled: courts reviewed / courts total

Summary of Findings

- The county incorrectly placed 6 licensed investigation expenses (\$14,946.27) in the expert witness category of services.
- The county incorrectly placed 10 expert witness expenses (\$13,698.75) in the other direct litigation category of services.
- The county does not maintain attorney applications or support documents of attorneys on the public appointment list.

II. INDIGENT DEFENSE EXPENDITURE REPORT

Indigent Defense Expenditure Reporting

Gregg County submitted the indigent defense expenditure report in a timely manner. The indigent defense expenditure report is due November 1st of each year. The annual indigent expenditure report is critical in establishing grant eligibility.

Monitor Comment

Gregg County maintains fiscal accountability of the formula grant. The county met the formula grant eligibility requirements.

III. ACCOUNTING OPERATIONS

Accounting Procedures

The county has written accounting procedures relating to criminal indigent defense expenses. Written procedures provide instruction and guidance, uniformity and completeness, and ensure correct and secure processing of fiscal information. The Uniform Grant Management Standards (UGMS) requires grantees financial systems to provide an “effective control and accountability of funds, property and assets...” (para 20, page 68). See Appendix C.

Monitor Comment

A copy of the accounting procedures was provided to the fiscal monitor. The accounting procedures have designated codes to identify indigent defense expenses; however, the county incorrectly placed expert witness expenses in licensed investigations and other direct litigation category of services.

Gregg County Response

To ensure that expenses are reported accurately during the past fiscal year, new account numbers have been created in the General Ledger for expert testimony, psychological evaluations, investigator fees, statement of facts, etc. These accounts are designated by each level of court.

IV. INDIGENT DEFENSE PAID VOUCHERS

A. Summary of Attorney Fee Payments

1. Fee Schedule

The attorney fee vouchers reviewed were paid in accordance with the fee schedule adopted by the formal action of the judges hearing criminal cases.

2. Reviewed Attorney Fee Vouchers

A total of 300 paid attorney fee vouchers (150 county courts-at-law and 150 district courts) were reviewed for the period of October 1, 2008 to September 30, 2009.

In FY 2009, the attorney fee payments ranged from \$60 to \$97,460 per attorney with an average of \$29,254 and a median of \$19,675.

County Courts-at-Law				
20 Different Paid Attorneys				
Courts	Paid Vouchers	Total		
		Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
County Court-at-Law	1,080	\$325,040	100	\$50,481
County Court-at-Law No. 2	100	\$45,630	50	\$22,588
Total	1,180	\$370,670	150	\$73,069

County Courts-at-Law = (misdemeanors + juvenile + juvenile appeals) + felony + felony appeals
 $\$370,670 = (\$304,471 + \$22,974 + \$3,575) + \$38,805 + \845

District Courts				
18 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
124 th District Court	317	\$168,276	75	\$56,815
188 th District Court	747	\$375,955	75	\$65,838
Total	1,064	\$544,231	150	\$122,653

District Courts = felony expenses + felony appeals + misd appeals + capital murder + misd expenses
 $\$544,231 = \$493,521 + \$29,882 + \$18,000 + \$2,828$

Monitor Comment

The attorney fee vouchers reviewed captured the specific data elements (defendant name, case numbers, court, offense, amount paid, attorney signature, and presiding judge signature) as required in Section 71.0351(e), Texas Government Code.

3. Summary of Investigations, Experts, and Other Direct Litigation Expenses

(a) As a result of reviewing expenses, the county incorrectly placed 6 licensed investigation expenses (\$14,946.27) in the expert witness category of services. Licensed investigation fees include “money paid by the county to a person licensed as an investigator or otherwise legally able to conduct investigations for a licensed attorney in preparing or presenting a defense for an indigent defendant.” Expert witness expenses include “money paid by the county to a person/entity qualified by the court in a field of study or *expertise* to provide assistance to a licensed attorney in preparing or presenting a defense for an indigent defendant” (Procedure Manual for the Indigent Defense Expenditure Report FY 2010).

Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Paid	FY 2009	Reviewed	Reviewed Value
Investigation	0	0	6	\$14,946
Expert Witness	13	\$32,546	7	\$17,600
Other Direct Litigation	64	\$101,219	64	\$101,219

Licensed Investigation Expenses

Investigation	Check No.	Date	Court	Expense
James Brown dba Pegasus Investigations	A0106914	6/8/2009	188th District Court	\$7,327.51
James Brown dba Pegasus Investigations	A0109648	9/8/2009	188th District Court	\$386.75
James Brown dba Pegasus Investigations	A0110710	10/12/2009	188th District Court	\$3,506.50
James Brown dba Pegasus Investigations	A0100504	10/20/2008	188th District Court	\$1,957.50
Seekers Investigations	A0106606	5/18/2009	188th District Court	\$810.00
Outdoor Enterprises	A0109738	9/8/2009	188th District Court	\$958.01
Total				\$14,946.27

(b) The county incorrectly placed 10 expert witness expenses (\$13,698.75) in the other direct litigation category of services. A competency examination is an assessment of an indigent defendant ability to understand and rationally participate in the court process; therefore, it is considered an expert witness expense, a direct cost in providing indigent defense services. Other direct litigation expenses are services other than counsel that may include but not necessarily limited to, postage, copies, and travel mileage.

Expert Witness Expenses

Examination	Check No.	Date	Court	Expense
Frank S. Murphy, D.O.	A0100751	10/30/2008	124th District Court	\$625.00
Thomas Allen, Ph.D.	A0105175	4/6/2009	124th District Court	\$1,062.50
Frank S. Murphy, D.O.	A0107394	6/15/2009	124th District Court	\$1,770.84
Frank S. Murphy, D.O.	A0103129	1/20/2009	188th District Court	\$1,052.08
Frank S. Murphy, D.O.	A0103301	1/29/2009	188th District Court	\$1,708.33
Thomas Allen, Ph.D.	A0106067	5/11/2009	188th District Court	\$1,250.00
Thomas Allen, Ph.D.	A0110035	9/21/2009	188th District Court	\$1,000.00
Thomas Allen, Ph.D.	A0109834	9/14/2008	CCL1	\$3,187.50
Thomas Allen, Ph.D.	A0108762	8/10/2009	CCL1	\$1,187.50
Thomas Allen, Ph.D.	A0106683	5/28/2009	CCL2	\$855.00
Total				\$13,698.75

The correct classification of expenses is the precursor to accurate reporting under the Fair Defense Act. Please refer to Procedure Manual for the Indigent Defense Expenditure Report FY 2010, page 3-7 at: <http://www.courts.state.tx.us/tfid/pdf/FY10IDERManualFinal.pdf> and Uniform Grant Management Standards: www.governor.state.tx.us/files/state-grants/UGMS062004.doc.

Recommendation

Task Force recommends that the county correctly place licensed investigation and expert witness expenses in the appropriate category of services in accordance with Section 71.0351, Texas Government Code.

Gregg County Action Plan

Agree. Beginning with FY 10 (10-1-09), the Auditor’s Office created new separate account numbers in the General Ledger for expert testimony, psychological evaluations, investigator fees, statement of facts, etc. Prior to that time many of these expenses were lumped together in one account. These new accounts are designated by each level of court. Utilization of these new account numbers will ensure that indigent costs are recorded and reported correctly.

Contact person(s): Valerie Palmer, County Auditor’s Office

Completion date: October 1, 2009

B. Public Appointment List

1. Approval of Qualified Attorneys by the Judges

Gregg County maintained support documents that indicated a majority of the judges approved the attorneys on the public appointment list pursuant to Article 26.04(d), Code of Criminal Procedure.

2. Applied for Public Appointment List

The county does not maintain applications or support documents of attorneys on the public appointment list in accordance with Article 26.04(d)-(e), Code of Criminal Procedure. Without the applications or support documents of court appointed attorneys on the public appointment list, the county auditor may not make proper payments consistent with Sections 174.1 and 174.2 of the Texas Administrative Code. It is unknown whether the attorneys met the minimum attorney qualification as specified in Gregg County’s local indigent defense plan.

Courts	Number of Attorneys		Percent Sampled
	public appointment list	applications reviewed	
County/District Courts	24	0	n/a

Percent Sampled: applications reviewed / number on public appointment list

The courts must maintain documentation of the attorney selection and appointment process so that the auditor can determine proper payments. The attorney application or support documents would substantiate that all court appointed attorneys selected were qualified to receive payments.

Recommendation

Task Force recommends that the county maintain applications or support documents of attorneys on the public appointment list in accordance with Article 26.04(a)-(d), Code of Criminal Procedure.

Gregg County Action Plan

Agree. An application form has been developed and implemented. All attorneys receiving appointments in Gregg County, Texas have a completed application on file. A copy of the completed application for each attorney has been forwarded to the Task Force on Indigent Defense.

Contact person(s): Melinda Wilson

Completion date: November 18, 2010.

Note: The completed attorney applications were forwarded to the fiscal monitor on November 18, 2010.

3. Continuing Legal Education (CLE) Requirements

Courts	Number of Attorneys			Percent Sampled*
	public appointment list	criminal/juvenile CLE documents		
		reviewed	met minimum hours	
County/District Courts	24	24	24	100%
Total	24	24	24	100%

Percent Sampled: documents reviewed / number on public appointment list

Monitor Comment

Gregg County provided support documents that court appointed attorneys on the public appointment list obtained the CLE hours according the county's local indigent defense plan and Title 1, Chapter 174, Texas Administrative Code.

Gregg County Response

Gregg County will continue to monitor CLE compliance.

V. PROCESS-IMPROVEMENT RECOMMENDATION

Internal Reviews

Task Force recommends that the county verify internally indigent defense procedures (e.g., expert witness expenses, licensed investigation expenses, and other direct litigation expenses).

An internal review can be a valuable management tool for:

- protecting institutional knowledge;
- training employees; and
- ensuring familiarity with operational practices and the county's local indigent defense plan.

VI. SUMMARY

General Comments

The Task Force wishes to express its appreciation to local county officials and employees of Gregg County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Bill Stoudt, Constitutional County Court; Judge David Brabham, Local Administrative District Court; Judge Alfonso Charles, 124th District Court; Ms. Laurie Woloszyn, County Auditor; Ms. Valerie Palmer, First Assistant County Auditor; and Ms. Melinda Wilson, Deputy Director, for accommodating the fiscal monitor's activities. These activities included providing workspace, allocating employee time, and exercising flexibility in meeting the schedule of the fiscal monitor. Thank you for your time and cooperation during the monitoring visit.

Gregg County Response

Thank you for your attention during the fiscal monitoring visit. We appreciate Ms. Conner's courteous and professional manner in conducting the fiscal visit. We are also grateful to have a familiar face to call for assistance. Should you have additional questions or comments, please contact us.

Appendix A

Texas Government Code, Section 71.0351. Indigent Defense Information

a) In each county, not later than November 1 of each odd-numbered year and in the form and manner prescribed by the Task Force on Indigent Defense, the following information shall be prepared and provided to the Office of Court Administration of the Texas Judicial System:

(1) a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code;

(2) any revisions to rules or forms previously submitted to the office of court administration under this section; or

(3) verification that rules and forms previously submitted to the office of court administration under this section still remain in effect.

(b) Except as provided by Subsection (c):

(1) the local administrative district judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the district courts trying felony cases in the county; and

(2) the local administrative statutory county court judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(c) If the judges of two or more levels of courts described by Subsection (b) adopt the same formal and informal rules and forms, the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall perform the action required by Subsection (a).

(d) The chair of the juvenile board in each county, or the person designated by the chair, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the juvenile board.

(e) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the Task Force on Indigent Defense and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

(1) in each district, county, statutory county, and court;

(2) in cases for which a private attorney is appointed for an indigent defendant;

(3) in cases for which a public defender is appointed for an indigent defendant;

(4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and

(5) for investigation expenses, expert witness expenses, or other litigation expenses.

(f) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the Office of Court Administration of the Texas Judicial System under this section and under a reporting plan developed by the Task Force on Indigent Defense under Section 71.061(a).

Appendix B

Texas Government Code, Section 71.062. Technical Support; Grants

a) The Task Force on Indigent Defense shall:

(1) provide technical support to:

(A) assist counties in improving their indigent defense systems; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) direct the comptroller to distribute funds, including grants, to counties to provide indigent defense services in the county; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to:

(A) withdraw grant funds; or

(B) require reimbursement of grant funds by the county.

(b) The Task Force on Indigent Defense shall direct the comptroller to distribute funds as required by Subsection (a)(2) based on a county's compliance with standards developed by the task force and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The Task Force on Indigent Defense shall develop policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the Task Force on Indigent Defense under this section.

Appendix C

Uniform Grant Management Standards

(As adopted June 2004)

paragraph 20, page 68. Standards for Financial Management Systems *[This section does not apply to procurement contracts.]*

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

- (1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.
- (2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.
- (3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.
- (4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.
- (5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.
- (6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

Appendix D

Art. 26.04. [494] [558] [547] Procedures for Appointing Counsel

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for or charged with a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(b) Procedures adopted under Subsection (a) shall:

- (1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;
- (2) apply to each appointment of counsel made by a judge or the judges' designee in the county;
- (3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;
- (4) require appointments for defendants in capital cases in which the death penalty is sought to comply with the requirements under Article 26.052;
- (5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.
- (6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

(c) Whenever a court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines that a defendant charged with a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in a criminal proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to defend the defendant in accordance with this subsection and the procedures adopted under Subsection (a). If the court or the courts' designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.

Art. 26.04. [494] [558] [547] Procedures for Appointing Counsel (Continued)

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets the objective qualifications specified by the judges under Subsection (e);
- (3) meets any applicable qualifications specified by the Task Force on Indigent Defense; and
- (4) is approved by a majority of the judges who established the appointment list under Subsection (e).

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

- (i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and
- (ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and

- (i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and
- (ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications.

(f) In a county in which a public defender is appointed under Article 26.044, the court or the courts' designee may appoint the public defender to represent the defendant in accordance with guidelines established for the public defender.

Appendix E

Art. 26.05. [494a] Compensation of Counsel Appointed to Defend

(a) A counsel, other than an attorney with a public defender, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(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 commissioners 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 and the judge approves the payment. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(d) A counsel in a noncapital case, other than an attorney with a public defender, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts.

Art. 26.05. [494a] Compensation of Counsel Appointed to Defend (Continued)

Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

(h) Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

Appendix F

Texas Administrative Code

<u>Title 1</u>	Administration
<u>Part 8</u>	Texas Judicial Council
<u>Chapter 174</u>	Indigent Defense Policies And Standards
<u>Subchapter A</u>	Minimum Continuing Legal Education Requirements
Rule §174.1	Appointment In Criminal Cases

An Attorney who meets the requirements of this rule may be appointed to represent an indigent person arrested for or charged with a crime, if the attorney is otherwise eligible under the procedures developed under Article 26.04, Code of Criminal Procedure. Crime has the meaning assigned by §173.2(2). An attorney may be appointed under this rule only if an attorney:

- (1) Completes a minimum of six hours of continuing legal education pertaining to criminal law during each 12-month reporting period. The judges of criminal courts of the county shall set the 12-month reporting period applicable to the jurisdiction. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. The judges may require attorneys to complete more than the minimum number of hours of continuing legal education in criminal law in the procedures developed under Article 26.04, Code of Criminal Procedure; or
- (2) Is currently certified in criminal law by the Texas Board of Legal Specialization.