

Supplement to Parker County Monitoring Report (2022): Additional Observations on Attorney Qualifications

Part I. Performance Indicators

TIDC has historically monitored how counties admit attorneys to lists, but not how counties review their performance.¹ TIDC is piloting key performance indicators related to attorney representation—caseloads, investigation, and client contact—to assess counties’ procedures for ensuring effective and ethical representation. For this supplemental report, TIDC is relying on counties’ expenditure reports and indigent defense plans, interviews and surveys, and additional sources as available.

During this pilot period, the following observations about attorney performance are not policy monitoring findings and do not affect TIDC funding. No response is required, though TIDC welcomes feedback.

Since its passage, the Fair Defense Act has required local jurisdictions to review qualifications for attorneys on the appointment list. Under Article 26.04(b)(5) of the Code of Criminal Procedure, counties must adopt procedures that

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.

Performance Review

TIDC reviewed Parker County’s County and District Court indigent defense plan² and interviewed local officials, staff, and defense attorneys to learn about procedures for performance review. The plan states that attorneys must “perform duties and responsibilities of a licensed attorney for the State of Texas professionally” and “maintain a high standard of ethical conduct.” The appointment list is reviewed annually, and if an attorney does not meet standards, the attorney will be removed from the list.

Caseloads

Attorneys need to spend enough time on each case to perform their basic duties.³ TIDC, in partnership with the Public Policy Research Institute at Texas A&M

¹ Attorney qualifications for appointment lists are one of six core Fair Defense Act requirements that TIDC monitors. 1 TEX. ADMIN. CODE § 174.28(c)(3).

² <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=191>

³ TEX. DISCIPLINARY RULES PROF’L CONDUCT R. 1.01. (see commentary: “A lawyer’s workload should be controlled so that each matter can be handled with diligence and competence.”)

University, studied the maximum number of cases an attorney could handle in a year while providing ethical representation.⁴ The study found that, in Texas, a private attorney should dispose no more than 226 misdemeanors, 128 felonies, 31 appeals, or a weighted combination of these cases.

Parker County does not have caseload limits. According to data reported by the County and local attorneys, in FY2019:

- Nineteen percent (11 of 58) attorneys who were paid for felony, misdemeanor, or appellate cases in Parker County had statewide indigent defense caseloads above the Texas caseload guidelines.⁵
- The majority of attorneys (77%) responding to TIDC's survey indicated their caseloads are manageable, although comments reflected that a number of attorneys accept appointments in multiple counties.
- The median appointed caseload was 37% of the guidelines.
- Including non-indigent-defense cases, 12 attorneys had total caseloads more than twice the guidelines.⁶
- Sixteen attorneys who were paid for Parker County appointments did not file practice time reports for Parker County.⁷
- Almost 91% of surveyed attorneys (20 out of 22) indicated they handle other types of cases in addition to appointed criminal and juvenile matters, with over half, 12 out of 22, reporting taking retained criminal or juvenile cases.

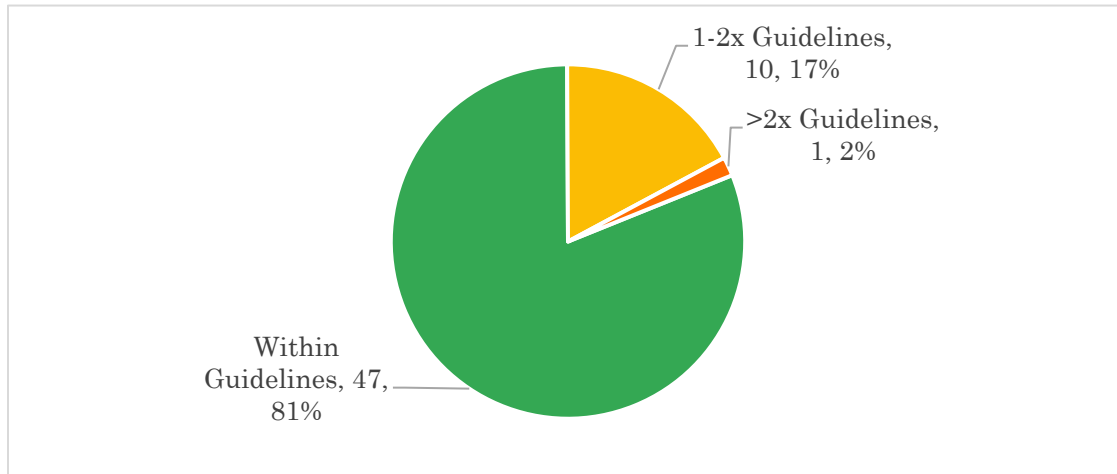
⁴ <http://tidc.texas.gov/caseloads>

⁵ This estimate is from county auditor data, available at <http://tidc.tamu.edu/public.net/Reports/AttorneyCaseLoad.aspx>. This estimate does not include capital or juvenile indigent defense cases, civil appointments, or retained cases.

⁶ This estimate combines county auditor data with data from attorneys on the percent of their practice time dedicated to indigent defense. For this estimate, TIDC divides attorneys' statewide indigent defense caseload (excluding juvenile and capital cases) by their reported percent of practice time devoted to appointed criminal cases. The total of 15 attorneys does not include those who did not file a practice time report.

⁷ Indigent defense plans require attorney to file these reports, as does CODE OF CRIM. PROC. ART. 26.04(j)(4). Attorneys may not have filed reports if they finished work in FY18 and were paid in FY19.

Figure 1: Parker County FY19 Attorney Caseloads vs. Texas Guidelines⁸



Use of Investigators

Attorneys have a duty to investigate the facts of each case.⁹ Some investigation can be performed by attorneys. Other investigation requires an investigator, because, for instance, attorneys cannot testify to facts that the attorney has investigated, or because of the need for added capacity or specialization.¹⁰ TIDC's caseload guidelines recommend that, on average, for misdemeanors, 13.8% of case time (60 minutes) is spent on attorney investigation and 5.3% of case time (28.5 minutes) is spent on investigator investigation; for felonies, the guidelines are 12.3% (122.8 minutes) of case time on attorney investigation and 7.7% (85.3 minutes) on investigator investigation.¹¹

The Parker County plan does not address expectations for investigators (beyond pay) and the courts do not systematically track use of investigators.

According to data reported by the County to TIDC, in FY2019:¹²

- No misdemeanor expenditures (0%, \$0 of \$184,178) were for investigators.
- Around 1.5% of total felony expenditures (1.58%, \$12,706 of \$801,578) was for investigators.

⁸ The caseloads from this chart reflect statewide appointments to attorneys taking Parker County appointments.

⁹ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01.

¹⁰ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 3.08.

¹¹ These recommendations are for cases that do not go to trial. More investigation time is recommended for cases that go to trial.

¹² <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=184&fy=2019>

Surveyed attorneys listed several types of cases where an investigator is not needed, including cases that are easily negotiated with prosecutors, and other responses indicated that it is difficult to obtain adequate advance funding for investigators and attorneys are discouraged from requesting investigators.

Client Contact

Attorneys have a duty to communicate with defendants about their case.¹³ Attorneys should be in regular contact, especially with clients who are in custody.¹⁴ They should also attempt to contact out-of-custody clients and discuss their cases out-of-court to ensure confidentiality¹⁵ and time to prepare.¹⁶ TIDC's caseload guidelines recommend that, on average, 13.9% (75 minutes) of misdemeanor case time and 16.1% (168.8 minutes) of felony case time is spent on client communication.¹⁷

The Parker County plan requires attorneys to “timely inform their client of matters . . . as necessary to provide reasonable assistance of counsel.”¹⁸ Further, a court may replace or sanction an attorney “if the attorney does not make an effort to contact the defendant by the end of the first working day if the defendant is in custody, or does not interview the defendant as soon as possible.” Parker County pays appointed attorneys at an hourly rate, and when attorneys submit vouchers, they list the dates of client visits. This allows the courts to know how soon and how often attorneys meet with clients. Most sample vouchers listed attorney-client visits, but about 4% did not list a client visit. When surveyed regarding indigent defense program oversight, one attorney replied:

[N]o one checks on my appointed cases in Parker County - the only check mark is the judge at billing and generally they will put the costs on the client even if they are being sentenced to custody

COVID-19 is the biggest issue surveyed attorneys cited affecting client contact.

Summary

Parker County has a method for overseeing whether attorneys meet with clients but does not have a method of systemically reviewing total caseloads or use of

¹³ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.03. *See also* TEX. CODE CRIM. PROC. art. 26.04(j)(4)(1), requiring appointed attorneys to contact and interview clients as soon as practicable.

¹⁴ *Id.*

¹⁵ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.05.

¹⁶ TEX. DISCIPLINARY RULES PROF'L CONDUCT R. 1.01.

¹⁷ These recommendations are for cases that do not go to trial. More communication time is recommended for cases that go to trial.

¹⁸ <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=390>

investigators. However, the court will remove attorneys from the list if they are not completing their duties to clients, and the list is reviewed annually. Most attorneys have caseloads within the guidelines, but 11 were more than 20% over the guidelines. Only about 1% of indigent defense spending is spent on investigation. The County should consider tracking annual statewide caseloads and use of investigators.

Part II. Indigent Defense Attorney Survey and Interview Results

In August 2021, with assistance from local courts, TIDC distributed an online survey to Parker County indigent defense attorneys and received 22 responses. Respondents were self-selected and may not be representative. Full responses are below, alphabetized and numbered. Notable observations included:

- **Oversight.** Most attorney said there is adequate oversight of them.
- **Caseloads.** Most attorneys said caseloads are manageable; however, two mentioned that many attorneys do not practice solely in Parker County, which makes it more difficult for clients to meet with them.
- **Investigation.** Attorneys most often said that, in the past year, they requested an investigator 0 times for misdemeanor cases (59.1%) and 1-10 times for felony cases (63.6%). Two attorneys reported that judges do not encourage the use of investigators. (“Judges do NOT like to appoint investigators in this County.”)
- **Client Communication.** Attorneys most often said they can “often” communicate effectively with clients (54.5%) and 40.9% say they always communicate effectively. Most reported visiting clients at the jail (21 of 22 respondents).
- **COVID-19 and Online Courts.** About half of the respondents (54.5%) reported that online courts are in some ways better and in some ways worse for clients. (“Online court is better if the client's attorney has spent an adequate amount of time meeting with and/or communicating with the client between court dates. If the attorney is only talking [to] client on court dates, it is worse.”)
- **Parker County.** Attorneys praised the organization and efficiency of the court. They are concerned about the backlog of cases due to COVID-19, too many out of county attorneys being appointed, and subtle pressure to plead cases quickly.
- **Assessment of Attorney Fees.** Attorneys who were interviewed noted that attorney fees are assessed against clients without an inquiry into their ability to pay the fees. Staff observations confirmed this practice.

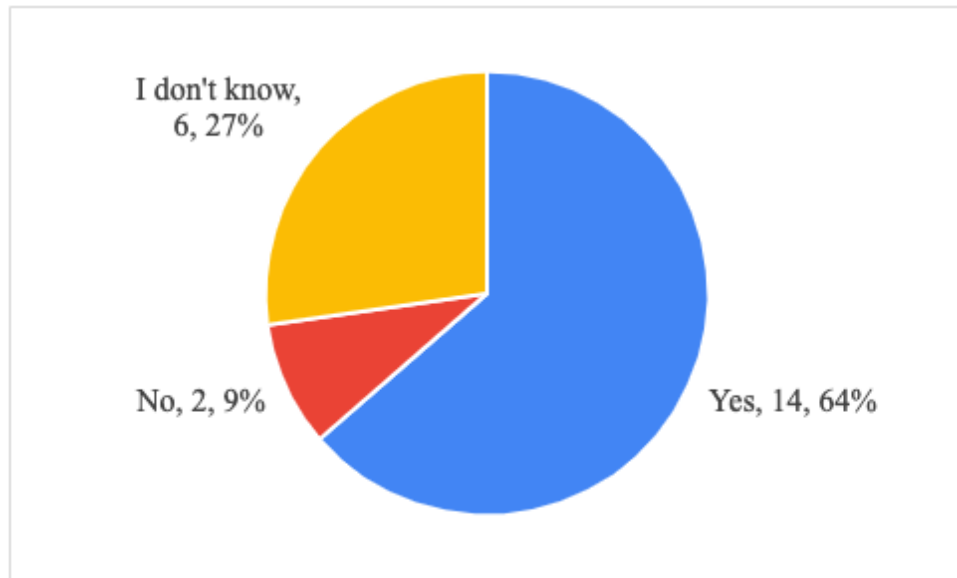
Survey Responses

Oversight	7
Is there adequate oversight of appointed attorneys in Taylor County?	7
2. If you have other comments on oversight, please share them here:	7
Caseloads	8
3. What types of work do you do beside indigent defense, if any?	8
4. Do attorneys taking appointments in Parker County have manageable caseloads?	8
5. If you have other comments on caseloads, please share them here:	9
Investigation	9
6. About how many times per year do you request an investigator for a misdemeanor case?	9
7. About how many times per year do you request an investigator for a felony case?	9
8. What types of cases almost always require an investigator?	10
9. What types of cases almost never require an investigator?	10
10. Have you had any difficulties receiving adequate funding for investigation in Parker County?	11
11. If you have other comments on investigation, please share them here:	11
Client Communication	11
12. How often are you able to communicate effectively with clients?	11
13. Where do you most often meet with clients? Select all that apply.	12
14. What are your biggest barriers to meeting with clients?	12
15. If you have other comments on client communication, please share them here:	12
COVID-19 and Online Courts	13
16. Have you appeared in online courts?	13
17. When you have hearings online, at what times are you able to confidentially communicate with clients? Select all that apply.	13
18. Overall, do you think that online courts are better or worse for clients than in-person courts?	13
19. If you have other comments on COVID-19 and online courts, please share them here:	14
Parker County	14
20. What is working well in Parker County's indigent defense system?	14
21. What is not working well in Parker County's indigent defense system?	15
22. How could TIDC help improve indigent defense in Parker County?	15
23. If you would like TIDC to follow up with you, please provide your name and contact information:	15

Oversight

1. Is there adequate oversight of appointed attorneys in Parker County?

+-[Provided answers: Yes; No; I don't know; Other]



2. If you have other comments on oversight, please share them here:

	Responses listed alphabetically:
•	I have not been made aware of any oversight in this area.
•	no one checks on my appointed cases in Parker County - the only check mark is the judge at billing and generally they will put the costs on the client even if they are being sentenced to custody

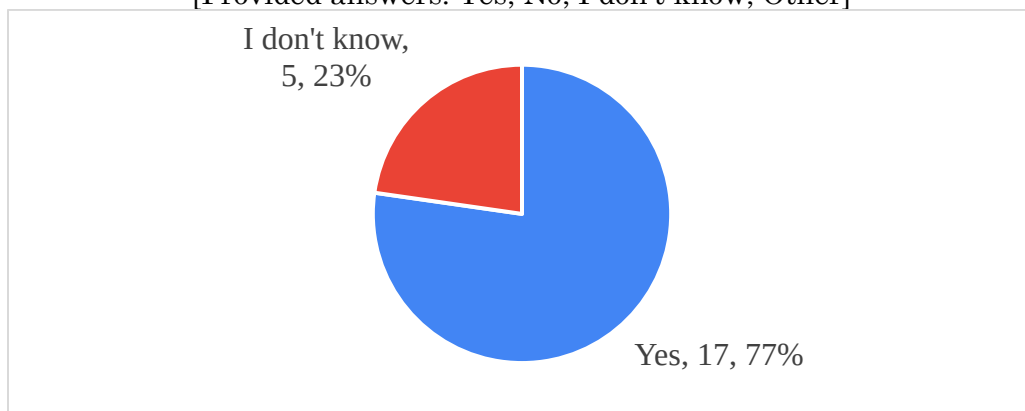
Caseloads

3. What types of work do you do beside indigent defense, if any?

	Responses listed alphabetically:
•	CPS and Family Law cases, including Juvenile defense
•	CPS both defense and ad litem for children, Juvenile law, retained clients in all 4 areas of practice.
•	Criminal defense
•	Criminal defense family law personal injury
•	elder law
•	family law
•	Family Law & Litigation
•	Federal and Appellate Work
•	I have retained clients across various counties - 95% of my practice is criminal defense
•	immigration
•	Indigent CPS cases, probate, estate planning, family law
•	none
•	None.
•	Paid criminal cases
•	Private, hired defense
•	retained cases, probate court matters, CPS cases
•	retained criminal defense
•	Retained criminal defense
•	Retained criminal defense
•	Retained criminal defense
•	retained criminal defense, family law, general practice
•	Retained criminal defense, including trial and appellate work. Retained civil litigation cases.

4. Do attorneys taking appointments in Parker County have manageable caseloads?

[Provided answers: Yes; No; I don't know; Other]



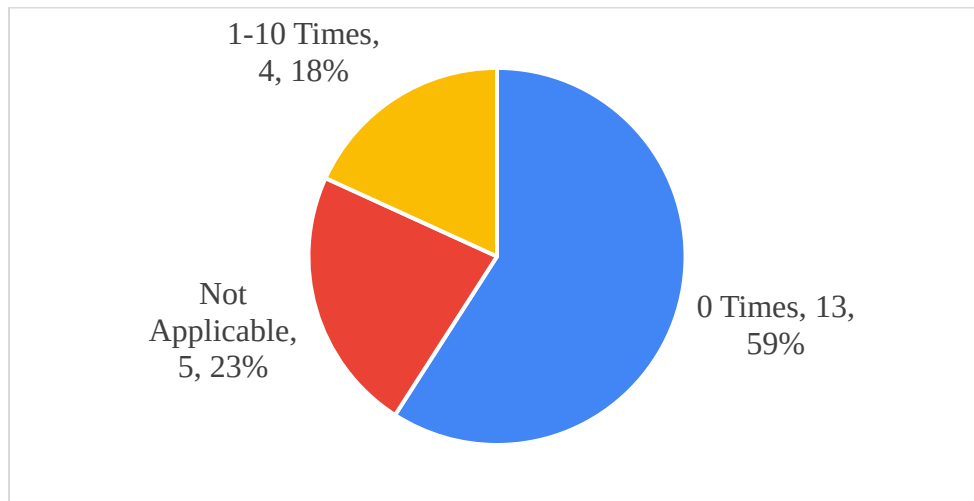
5. If you have other comments on caseloads, please share them here:

	Responses listed alphabetically:
•	a good number on the wheel in Parker do not practice solely in Parker County
•	too many out of county attorneys without offices appointed making it difficult for clients

Investigation

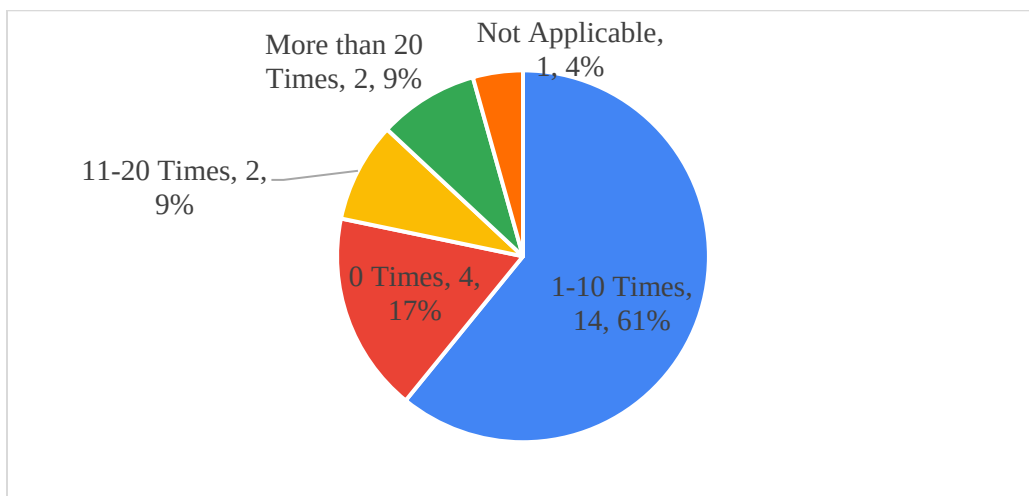
6. About how many times per year do you request an investigator for a misdemeanor case?

[Provided answers: 0 Times; 1-10 Times; More than 10 Times; Not Applicable]



7. About how many times per year do you request an investigator for a felony case?

[Provided answers: 0 Times; 1-10 Times; 11-20 Times; More than 20 Times; Not Applicable]



8. What types of cases almost always require an investigator?

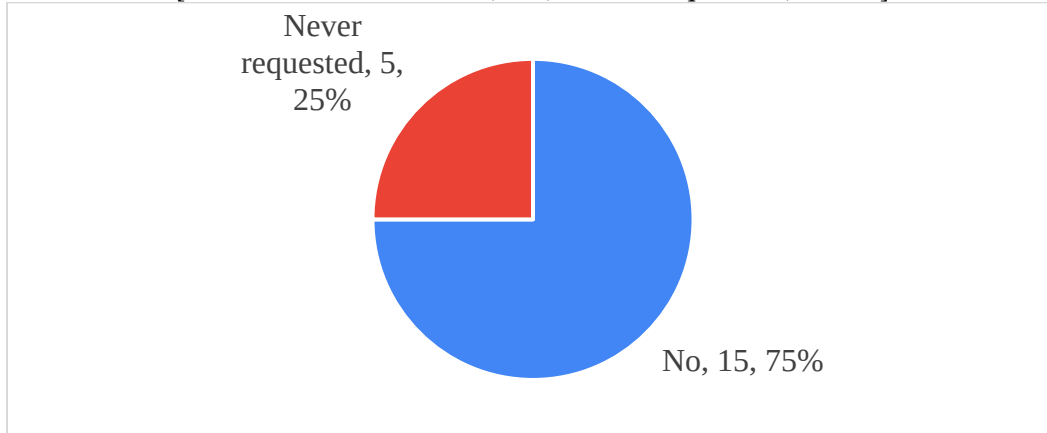
	Responses listed alphabetically:
•	Assault Family Violence cases
•	assault FV
•	Child abuse
•	Child victim cases
•	Complex criminal cases, property crimes, crimes against the person
•	Complicated cases with multiple witnesses
•	depends on facts
•	Fact specific
•	murder
•	Murder, aggravated robbery, Continuous Sexual Assault
•	Murder, child molestation
•	Murder,sexual assault. Depends on the facts of the case.
•	Sex assaults
•	Sex Asslt Child
•	Sexual assault
•	Sexual Assault, Aggravated Assault, Murder
•	Sexual Offenses and Murder

9. What types of cases almost never require an investigator?

	Responses listed alphabetically:
•	Any type case might require an investigator
•	Cases that are easily worked out with prosecutors
•	Drug cases
•	Drug cases
•	Drug cases
•	drug charges
•	Drug Offenses, ALMOST never.
•	Drug possession, theft
•	Drugs
•	DWI
•	DWI
•	DWI
•	PCS and theft
•	Possession of a controlled substance
•	possession of drugs
•	Simpler cases with few witnesses
•	State Jail Felony level thefts from businesses.

10. Have you had any difficulties receiving adequate funding for investigation in Parker County?

[Provided answers: Yes; No; Never requested; Other]



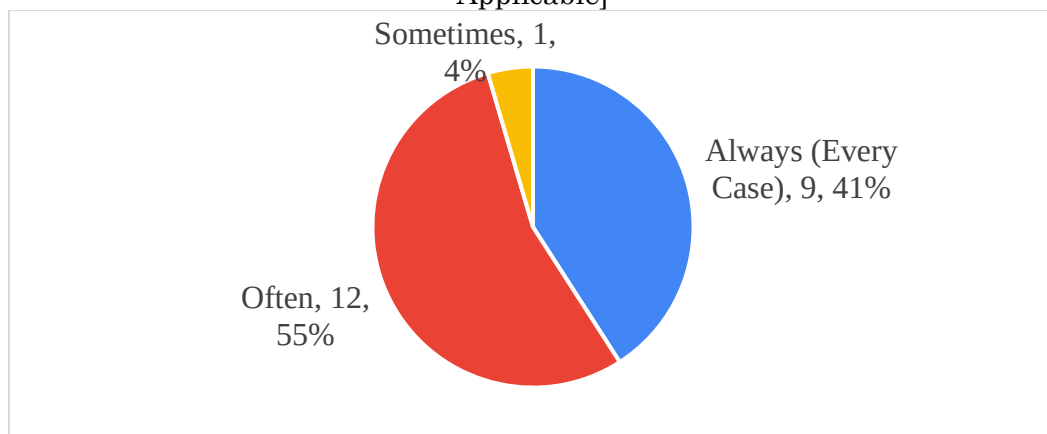
11. If you have other comments on investigation, please share them here:

	Responses listed alphabetically:
•	I do not ask for an investigator unless I see a real need or purpose. usually to find or interview a witness
•	I don't handle appointed misdemeanor cases in Parker. I also mostly have revocation matters, which often don't require an investigator.
•	I have been on the Parker County appointment list for less than a year, but have been on the Tarrant County wheel for several years
•	It is hard to get adequate advance funding
•	Judges are not encouraging of use of investigators
•	Judges do NOT like to appoint investigators in this County

Client Communication

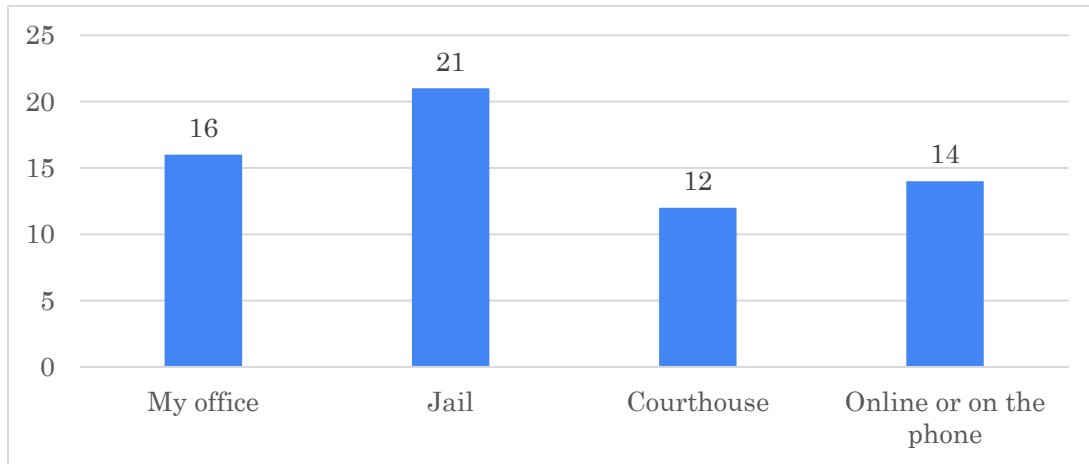
12. How often are you able to communicate effectively with clients?

[Provided answers: Always (Every Case); Often; Sometimes; Rarely; Never (No Cases); Not Applicable]



13. Where do you most often meet with clients? Select all that apply.

[Provided answers: Courthouse; My office; Jail; Online or on the phone; Other]



14. What are your biggest barriers to meeting with clients?

	Responses listed alphabetically:
•	Covid
•	COVID
•	Covid-19 required alternate means of meeting, but that has improved after vaccines
•	Effectively Communicating with Client at Parker County Jail
•	Having client's who are vested in their own defense.
•	in custody
•	In jail
•	lack of gas money or phone
•	None
•	None
•	none
•	The for profit Jail has only 3 attorney booths, and it is easy to hear what is said in them.
•	they do not keep contact information current with me or my office
•	They refuse to communicate
•	Time

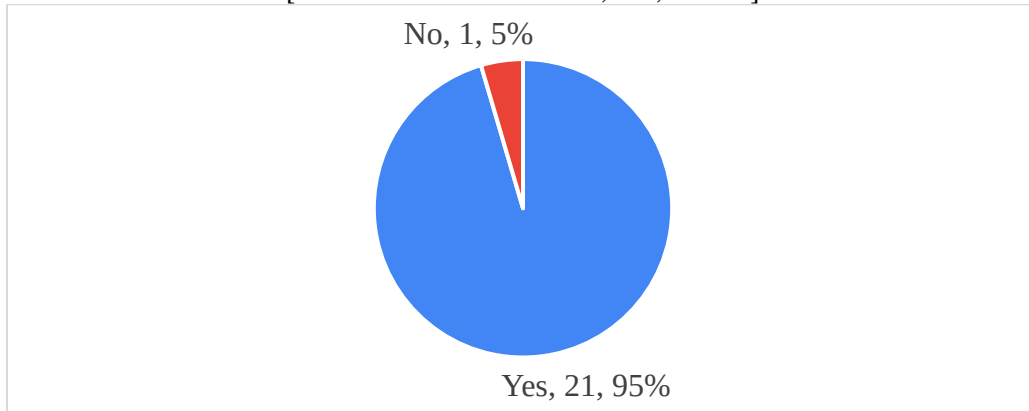
15. If you have other comments on client communication, please share them here:

	Responses listed alphabetically:
•	I am not always provided adequate contact information for appointed clients.
•	I provide: my office phone, my business & my personal cell numbers, email & SASE to inmates
•	I would like more numbers to reach indigent clients on the front end
•	The for profit jail records attorney client phone calls.

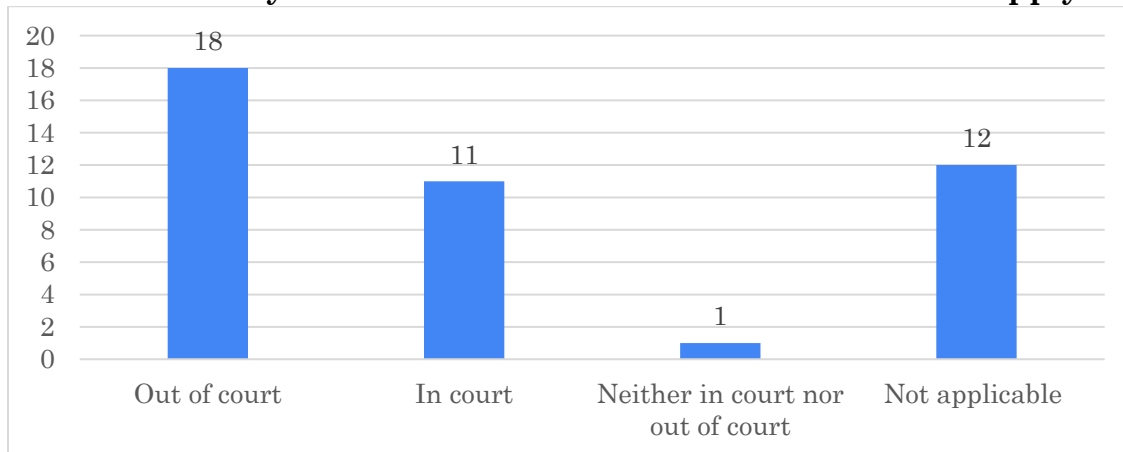
COVID-19 and Online Courts

16. Have you appeared in online courts?

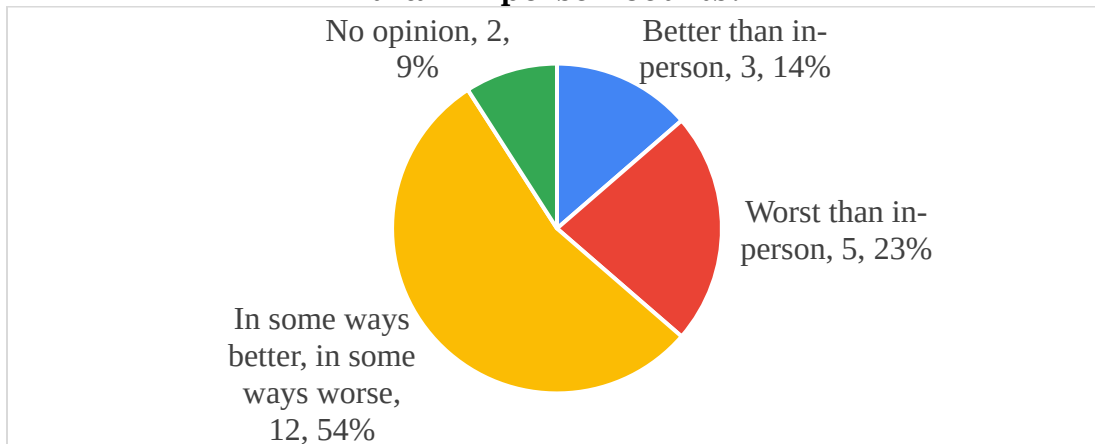
[Provided answers: Yes; No; Other]



17. When you have hearings online, at what times are you able to confidentially communicate with clients? Select all that apply.



18. Overall, do you think that online courts are better or worse for clients than in-person courts?



19.If you have other comments on COVID-19 and online courts, please share them here:

	Responses listed alphabetically:
•	great solution
•	Online court is better if the client's attorney has spent an adequate amount of time meeting with and/or communicating with the client between court dates. If the attorney is only talking other client on court dates, it is worse.
•	Online Courts allow us to move cases faster, as able to avoid transport issues
•	online courts do not seem effective due to the inability to communicate with prosecutors and defendant
•	Works for routine dockets
•	Zoom pleas work well and reduce contact with others, as do Zoom dockets, but only with the free use of "break out rooms". The Judges do NOT want to use this tool at present.

Parker County

20. What is working well in Parker County's indigent defense system?

	Responses listed alphabetically:
•	Access to court appointments
•	Appointment process
•	Great judges, prosecutors,court staff,bailiffs and clerks
•	Have not been taking appointed cases in Parker County long enough to have a strong opinion.
•	It is still a small-ish county so we know each other
•	Judges expect the proper representation for appointed clients, and willing to pay for the time expected
•	not sure
•	Parker County has a very well-organized and efficient indigent defense system
•	Parker County's system allows lawyers to be paid fair compensation for their time and effort in indigent defense cases.
•	speed
•	The judges monitor indigent appointments closely
•	The Judges pay my bills and do not pay me less than what I bill.
•	The pay scale and application to cases are equitable.
•	The timeline and efficiency of the prosecutors and court staff.
•	There are some great defense attorneys

21. What is not working well in Parker County's indigent defense system?

	Responses listed alphabetically:
•	Clients contacting me once I am initially appointed. I typically have to find and reach out to them.
•	Have not been taking appointed cases in Parker County long enough to have a strong opinion.
•	nothing
•	Nothing
•	Persistence in in person court when online works well
•	Pressure to plead cases quickly (though this is subtle).
•	the backlog of cases due to covid-19
•	There are fewer cases filed in Parker County, so the docket move more quickly than in larger counties.
•	There are some attorneys who should not take appointments
•	There is not a defense bar that functions as a group
•	too many appointments for clients who are not indigent,- low attorney fees make it not cost effective to take appointments
•	Too many out of county attorneys that take cases that I could have.

22. How could TIDC help improve indigent defense in Parker County?

	Responses listed alphabetically:
•	Get private meeting rooms in the Courthouse and jail.
•	Have not been taking appointed cases in Parker County long enough to have a strong opinion.
•	help us not have clients stuck with our fees when they are indigent. I actually feel bad when a case takes time and I know they are going to just take the money from my client.
•	I know TIDC has presented in Tarrant County. I am new to the Parker County Criminal Defense Bar Association, so I am unsure if TIDC has presented there.
•	local attorney's, better pay for attorney fees, offers that are reasonable from DA which promote moving cases.
•	Nothing
•	Provide free CLE for attorneys volunteering to accept appointments
•	stay out of the way
•	Unknown

23. If you would like TIDC to follow up with you, please provide your name and contact information:

[Answers redacted.]