



HON. RANDY M. CLAPP

DISTRICT JUDGE

329TH JUDICIAL DISTRICT

HISTORIC WHARTON COUNTY COURTHOUSE

100 S. FULTON, SUITE 200

WHARTON, TEXAS 77488

Cassie Ritter, C.C.M.

Court Administrator

Sherri Johnson, C.S.R.

Court Reporter

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www.329th.com

September 12, 2014

Ms. Debra Stewart, CPA, CIGA
Fiscal Monitor

Mr. Joel Lieurance
Policy Monitor

Fiscal Monitoring:

County Response for Finding One:

Wharton County Action Plan:

Proper coding and a better understanding of case numbers have been conveyed to the auditor's office for future reference on separating case types.

See additional response from auditor's office attached

Contact Person: Cassie Ritter/Diedra Becker Completion Date: September 12, 2014

County Response for Finding Two:

Wharton County Action Plan:

Invoices are being monitored more closely prior to the judge signing. The judges will not sign the attorney fee voucher until it has been properly completed and signed by counsel.

Finding Two states in part "The county made payments on invoices where attorneys had not fully completed the required itemized voucher."

The Wharton District and County Courts Plan states under Fee and Expense Payment Process (B)(i) "The signature and certification of the attorney in the bottom section of the Request for Counsel form shall constitute the attorney fee voucher in these cases. (ii) An appointed attorney performing services other than those in connection with a routine plea (including investigation and expert expenses, pretrial motions, trial and appeal) shall submit an itemized claim to the court for services rendered and expenses incurred using the Attorney Fee Voucher form." This policy has been approved by the TIDC.

Contact Person: Cassie Ritter

Completion Date: September 12, 2014

County Response for Finding Three:
Wharton County Action Plan:

Invoices will be monitored more closely to identify all cause numbers for disposed cases. The judges will not sign the attorney fee voucher until all cause numbers of cases disposed of in reference to this payment voucher are listed on the form.

Contact Person: Cassie Ritter

Completion Date: September 12, 2014

County Response for Finding Four:
Wharton County Action Plan:

Compliance by attorneys on the indigent counsel list has been fully verified. All attorneys not in compliance have been removed from the appointment list. The Indigent Defense Coordinator will send a list of attorneys with the case types that they have qualified for and their compliance status to the County Auditor's office each year.

Contact Person: Cassie Ritter

Completion Date: September 12, 2014

Policy Monitoring Responses:

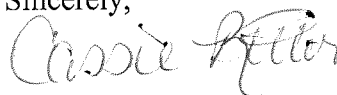
- 1) The County Judge has informed all magistrate judges of the responsibility to ask all arrestees of their right to ask for court appointed counsel.
- 2) The County Judge has included the issue of bond in his correspondence to the magistrate judges.
- 3) During the monitoring process, court officials amended their procedures for handling waivers of counsel and created a form with the language of Article 1.051(g). The court then made findings that waivers were being voluntarily and intelligently made prior to accepting a plea.

See attached correspondence from County Judge Philip Spenrath

Contact Person: Hon. Philip Spenrath

Completion Date: September 12, 2014

Sincerely,



Cassie Ritter,
Court Administrator
Indigent Defense Coordinator

cr
cc: Hon. Randy M. Clapp
cc: Hon. Philip Spenrath
cc: Trey Maffett
cc: Sharon Boedecker

| Expenditures | Total Vouchers | | | |
|-------------------------|----------------|----------------|----------|----------------|
| | Reported | | Reviewed | Reviewed Value |
| | Paid | FY 2013 | | |
| Investigation | 0 | \$0 | 0 | \$0 |
| Expert Witness | 0 | \$0 | 0 | \$0 |
| Other Direct Litigation | 2 | \$1,146 | 2 | \$1,146 |
| Total | 2 | \$1,146 | 2 | \$1,146 |

The county must review all invoices to identify the civil case payments and case counts that were inadvertently reported in the IDER. The county should submit a corrected FY 2013 Indigent Defense Expense Report to the TIDC. The county should develop procedures to ensure all civil and criminal expenses are accounted for separately. All county employees that process invoices should be trained on the difference between civil cases and criminal cases.

County Response for Finding One:

| | <u>Fee</u> | <u>County</u> |
|---|---------------------------------|-----------------|
| Juvenile- Correct | | |
| Adult Non-Capital Felony- AC From 115,701.77 to \$91,194.05 | | From 435 to 408 |
| Adult Non-Capital Felony- OL From 1,145.86 to 0.00 | | From 99 to 90 |
| Adult Misdemeanor- AC From 13,225.00 to \$11,800.00 | | |
| Adult Felony Appeal- Correct | | |
| Totals | From 157,862.12 to \$131,929.40 | From 598 to 562 |

Wharton County Action Plan

We have identified criminal case numbers by:

District Court= 1#'s with exception list provided by District Court.
 County Court= All numbers except 100#'s

Contact person(s): Deidra D Becker

Completion date: September 12, 2014

Finding One Attachment



PHILLIP S. SPENRATH

Wharton County Judge
309 E. Milam Street, Suite 600
Wharton, Texas 77488
Office: (979)532-4612 Fax: (979)532-1970

Joyce Ferrell
Administrative Assistant

Patty Shannon
Court Coordinator

September 10, 2014

#3 Waiver of Counsel Provisions Article 1.051

As pursuant to the provisions of Article 1.051(f-1) or (f-2) on handling waivers of counsel the court has addressed and insured that the waivers are being voluntarily and intelligently made prior to accepting a plea.

Policy Monitoring Response Attachment 1.



PHILLIP S. SPENRATH

Wharton County Judge
309 E. Milam Street, Suite 600
Wharton, Texas 77488
Office: (979)532-4612 Fax: (979)532-1970

Joyce Ferrell
Administrative Assistant

Patty Shannon
Court Coordinator

September 9, 2014

RE: Wharton County Response to TIDC Monitoring Report

Judges of Justice Courts,

On February 24-26, 2014, the Texas Indigent Defense Commission conducted an on-site review of Wharton County's 2013 Formula Grant. After completion, the TIDC sent our County a Monitoring Report listing policy and procedural concerns as well as making recommendations in response to them. Some recommendations involved the fiscal accounting of Indigent Defense payments and others involved the process of appointed counsel.

In particular, the following are TIDC recommendations directly related to your duties as Magistrates:

Recommendations Regarding Methods to Administer Article 15.17 Hearings

Please provide a written response to Recommendations 1 and 2 by September 15, 2014.

1) For offenses with a Class B misdemeanor grade and higher, the magistrate must ask all arrestees whether they want to request counsel. Article 15.17(a) of the Code of Criminal Procedure does not provide for a delegation of this task. Jail staff may also ask arrestees whether they want to request counsel.

2) An arrestee's ability to make bond may not be used as an impediment to a request for counsel. Article 15.17(a) does not provide for a prerequisite inquiry as to whether the arrestee can make bond before he/she can request counsel. *Rothgery v. Gillespie County*, 554 U.S. 991 (2008), held that the Sixth Amendment right to counsel attaches when a defendant appears before a magistrate and learns of the charges against him and his liberty is subject to restriction (i.e. the Article 15.17 hearing which was held to be the initiation of adversarial judicial proceedings).

** found on top of page 17 of TIDC Response Report

Policy Monitoring Response Attachment 2

Pursuant to Recommendation 1, Magistrates must ask the arrestees whether they want to request counsel. In Recommendation 2, Magistrates cannot suggest to arrestees that they will not be eligible to bond out if they request counsel.

One final recommendation (below) provides that a Copy of the Magistrate Warning Form should be sent to the appropriate Court so that it can be included in the defendant's permanent court file.

Examination of Magistrate Warning Forms

The monitor examined 61 misdemeanor cases filed with the county clerk between March 5, 2013 and April 2, 2013 to document procedures for conducting Article 15.17 hearings. The magistrate warning form is not part of the misdemeanor case file, and so the monitor attempted to match case files with magistrate warning forms maintained by the justices-of-the-peace. The monitor was able to match 46 of these cases.

** found on bottom page 15-16 of TIDC Response Report.

In summation, I feel confident that all you have been following these procedures fairly and according to the letter of the law. As part of the TIDC review process, I am required to share the aforementioned concerns and recommendations with you. Please make sure that we always follow the aforementioned requisite practices of law.

THANK YOU for all you do in keeping our citizens safe and ensuring that all arrestees are treated fairly and in full accordance to the laws and Constitution of the United States and Texas.

Sincerely,

Phillip S. Spenrath

Wharton County Judge

309 E. Milam, Suite 600

Wharton, TX 77488

979-532-4612

979-532-1970 Fax