

ECTOR COUNTY COURTHOUSE  
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**DENN WHALEN**  
JUDGE, 70<sup>TH</sup> DISTRICT COURT  
LOCAL ADMINISTRATIVE JUDGE

December 11, 2024

Via Electronic Mail: [jlieurance@tidc.texas.gov](mailto:jlieurance@tidc.texas.gov)

Mr. Joel Lieurance  
Senior Policy Monitor  
Texas Indigent Defense Commission  
209 W. 14<sup>th</sup> Street, Room 202 (Price Daniel Building)  
Austin, TX 78701

Re: Ector County's Response to TIDC's Fiscal Monitoring Report and Policy  
Monitoring Review of Ector County

Dear Mr. Lieurance:

Thank you for your Fiscal and Policy Monitory Reports from August 2024. The Board of Judges in consultation with the County Court at Law Judges and Justices of the Peace have formulated the following responses to those findings.

**Texas Indigent Defense Commission Policy Monitoring Report Issued August 2024**

**FINDING ONE AND RECOMMENDATION:** At the Article 15.17 hearing, a magistrate must ensure arrested persons have reasonable assistance in completing the necessary forms for requesting counsel. The County must provide a method to ensure reasonable assistance in completing affidavits of indigence is provided at the time of the Article 15.17 hearing.

Response: Ector County magistrates have implemented procedures where each defendant who requests appointment of counsel receives an application at the time of magistration. The Ector County Sheriff's Office has assigned staff to provide reasonable assistance to any defendant in completing the application for appointment of counsel at the time of magistration.

**FINDING TWO AND RECOMMENDATION:** Article 15.17 (a) requires requests for counsel and associated paperwork be sent to the appointing authority within 24 hours of

the request being made. The County must provide a consistent and reliable process to ensure requests are sent to the appointing authority within 24 hours of the request.

Response: Ector County magistrates have implemented procedures where each defendant who requests appointment of counsel receives an application at the time of magistration. The Ector County Sheriff's Office has assigned staff to provide reasonable assistance to any defendant in completing the application for appointment of counsel at the time of magistration. Additionally, as soon as a defendant requests counsel, that request will be returned to the appropriate courts by transport officers who are trained to know the importance of said process. Further, electronic notification from the law enforcement center to the appropriate courts will continue to be utilized.

**FINDING THREE (FELONY CASES) AND RECOMMENDATION:** Ector County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051 (c)(1), district courts must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051 (c)(1)'s timeline.

Response: The current process provides for electronic notification from the law enforcement center when a request for counsel is made on a felony case. Jail staff has been informed of the importance of timely sending requests for counsel to the District Courts so that requests for counsel may be addressed in a timely manner. If the request can't be made electronically for some reason, the request will be hand delivered by transport staff to the appropriate court coordinator.

**FINDING FOUR (MISDEMEANOR CASES) AND RECOMMENDATION:** Ector County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051 (c)(1), statutory county courts must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051 (c)(1)'s timeline.

Response: Request for counsel are delivered daily to the appropriate misdemeanor court judge by jail staff. The importance of timely notifying the courts has been discussed with the appropriate stakeholders at the jail.

**FINDING FIVE (MISDEMEANOR CASES) AND RECOMMENDATION:** The County does not have processes in place to ensure all misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051 (f-2), the court must rule upon a request for counsel prior to a defendant's waiver of the right to retain counsel.

Response: Request for counsel are delivered daily to the appropriate court assigned to the misdemeanor cases. Prior to any plea being taken, a defendant is required to waive counsel.

**RE: Ector County's Response to Findings in Fiscal Monitoring Report August 2024**

FINDING ONE

Under §79.036 (e) of the Texas Government Code, the county auditor or designated person shall prepare and send to the Commission, in the form and manner prescribed by the Commission, data documenting the amount expended by the county for indigent defense in each court and in each case in which appointed counsel are paid. Ector County prepared and submitted the FY 2024 Indigent Defense Expenditure Report (IDER). However, the financial data reviewed by TIDC showed that the report was not prepared in the manner required.

Recommendation:

The County should consider separating criminal expenses and civil court expenses on the general ledger. All types of Ector County's indigent defense expenditures should be reviewed and recorded on the general ledger in categories that are eligible to be reported, including investigation expenses. These expenditures should be separated from the categories that are ineligible to be reported on the IDER.

Response: At the time of the on site visit the county had recently appointed a new auditor. The information available to the new auditor was less than ideal. The auditor and her staff will review the IDER Manual and take advantage of the videos on TIDC's website in order to prepare a compliant report. The District Judges have taken steps to ensure that investigative expenses and transcript preparation costs for appeals are clearly identified so that they may be categorized appropriately in the IDER.

FINDING TWO

TIDC examined 45 attorney fee vouchers to determine whether indigent defense payments met the requirements of Code Criminal of Procedure (CCP) Article 26.05 (b) and the local fee schedule. Three of the 45 attorney fee vouchers reviewed for FY2024 did not appear to be paid in accordance with the published fee schedule as required by Article 16.05 (b).

Recommendation:

Judges should review the fee schedules and take formal action, if necessary, to adopt a new fee schedule that is consistent with current payment practices in accordance with the requirements of CCP Article 26.05 (b) and current case law. Procedures should be developed to verify that the approved rate of pay for each voucher is within parameters of the published fee schedule to meet the requirements of CCP Article 16.05 (b).

Response: The fee schedule that has been adopted has been reviewed and will be modified to some extent. The problem appears to be a disconnect between what is

provided to the courts from the District Clerk's office. In some cases not all of a particular defendant's cases are reported on the order for payment which would result in a deviation from the local fee schedule. Discussions have taken place emphasizing the need for accurate information from all parties. The Courts will also ensure that indigent defense payments are consistent with the local fee schedule.

### FINDING THREE

Code of Criminal Procedure Article 26.04 (a) requires the courts to adopt and publish written countywide procedures for providing indigent defense services, commonly known as an indigent defense plan. As part of these procedures, the judges must adopt an attorney fee voucher form consistent with CCP Article 16.05 (c).

#### Recommendation:

The form submitted to TIDC with the combined District Courts and County Courts' indigent defense plan does not appear to be the form in use. The judges should come to a consensus as to the form to be used countywide.

Response: The courts will utilize the TIDC model attorney fee voucher, attached hereto

I am hopeful the information provided has been responsive to your requests. If further information is needed, please feel free to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "Denn Whalen", written in a cursive style.

Denn Whalen, 70<sup>th</sup> District Court  
Ector County Administrative Judge

# Attorney Fee Voucher

<b>1. Jurisdiction</b> <input type="checkbox"/> District <input type="checkbox"/> County  <input type="checkbox"/> County Court at Law  Court # _____	<b>2. County</b>  _____	<b>3. Cause Number</b> <b>Offense</b>  _____  _____	<b>4. Proceedings</b> <input type="checkbox"/> Trial-Jury <input type="checkbox"/> Trial-Court  <input type="checkbox"/> Plea-Open <input type="checkbox"/> Plea- Bargain  <input type="checkbox"/> Other _____
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**5. In the case of:** State of Texas v

**6. Case Level**  
 Felony     Misdemeanor     Juvenile     Appeal     Capital Case  
  
 Revocation – Felony     Revocation – Misdemeanor     No Charges Filed     Other \_\_\_\_\_

<b>7. Attorney (Full Name)</b>	<b>9. Attorney Address (Include Law Firm Name if Applicable)</b>	<b>10. Telephone</b>
<b>8. State Bar Number</b>	<b>8a. Tax ID Number</b>	<b>11. Fax</b>

<b>12. Flat Fee – Court Appointed Services</b>	<b>12a. Total Flat Fee</b>
	\$

13.	In Court Services	Hours	Dates	13a. Total In Court Compensation.
	Rate per Hour =	Total hours		\$

14.	Out of Court Services	Hours	Dates	14a. Total Out of Court Compensation.
	Rate per Hour =	Total hours		\$

15.	Investigator	Amount	15a. Total Investigator Expenses
			\$

16.	Expert Witness	Amount	16a. Total Expert Witness Expenses
			\$

17.	Other Litigation Expenses	Amount	17a. Total Other Litigation Expenses
			\$

**18. Time Period of service Rendered:** From \_\_\_\_\_ to \_\_\_\_\_  
Date Date

<b>19. Additional Comments</b>	<b>20. Total Compensation and Expenses Claimed</b>
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**21. Attorney Certification – I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel.**

Final Payment     Partial Payment

\_\_\_\_\_  
Signature Date

<b>22. SIGNATURE OF PRESIDING JUDGE:</b>	<b>Amount Approved:</b>
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Reason(s) for Denial or Variation