

TEXAS TASK FORCE ON INDIGENT DEFENSE

205 West 14th Street, Suite 700 Tom C. Clark Building (512) 936-6994

P.O. Box 12066, Austin, Texas 78711-2066

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

DIRECTOR:
MR. JAMES D. BETHKE

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

May 18, 2011

The Honorable Michael Bradford
Constitutional County Court Judge
Midland County Courthouse
500 N. Lorraine Street
Midland, Texas 79701

Re: Midland County Fiscal Monitoring Visit

Dear Judge Bradford:

A monitoring visit of your county was conducted on March 8-9, 2011. 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 fiscal monitoring visit. We greatly appreciated the time and cooperation of Midland 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 Rodney Satterwhite, Local Administrative District Court Judge
The Honorable Marvin L. Moore, Local Administrative Statutory County Court Judge
Ms. Veronica Morales, County Auditor
Ms. Marsha Cooper, Assistant 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

Midland County, Texas

on

March 8-9, 2011

Final

May 18, 2011

TABLE OF CONTENTS

I. INTRODUCTION.....	4
Task Force Background	6
Objectives	6
Scope.....	6
Methodology	6
Summary of Findings.....	7
II. INDIGENT DEFENSE GRANTS	7
A. Formula Grant.....	7
B. Extraordinary Grant	7
C. Indigent Defense Expenditure Reporting.....	7
III. ACCOUNTING OPERATIONS	8
Accounting Procedures	8
IV. INDIGENT DEFENSE PAID VOUCHERS	9
A. Summary of Attorney Fee Payments	9
1. Fee Schedule	9
2. Reviewed Assigned Counsel Fee Vouchers	9
3. Summary of Investigations, Experts, and Other Direct Litigation Expenses	10
B. Public Appointment List.....	11
1. Approval of Qualified Attorneys by the Judges	11
2. Applied for Public Appointment List	12
3. Continuing Legal Education (CLE) Requirements.....	12
V. SUMMARY	13
General Comments.....	13
APPENDICES:	
A. Section 71.0351, Texas Government Code.....	14
B. Section 71.062, Texas Government Code.....	15
C. Financial Management, UGMS.....	16
D. Article 26.04, Code of Criminal Procedure	17
E. Article 26.05, Code of Criminal Procedure.....	20
F. Chapter 174, Rule 174.1, Texas Administrative Code	22

I. INTRODUCTION

Midland County on-site fiscal monitoring visit was conducted on March 8-9, 2011. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Task Force grant. Dominic Gonzales, grant program specialist, accompanied the fiscal monitor.

Midland County is located on the southern edge of the High Plains in West Texas. Midland, the county seat, is twenty miles northeast of Odessa and thirty-nine miles southwest of Big Spring in the north central part of the county. The county has an estimated population of 136,872.

Midland County's court system is comprised of 2 statutory county courts and 5 district courts with criminal jurisdiction. In 2010, the county received \$61,243 in formula grant funds. Additionally, the county collected \$125,178 for reimbursement of attorney fees from defendants. For more details, see table on page 5.

Midland County Indigent Defense Expenditures			
Expenditures	2008	2009	2010
Population Estimate	126,353	126,353	136,872
Juvenile Assigned Counsel	\$40,990	\$72,864	\$57,449
Juvenile Assigned Counsel Appeals	\$1,539	\$4,801	\$4,548
Juvenile Contract Counsel	\$18,525	\$13,100	0
Adult Misdemeanor Assigned Counsel	\$21,600	\$40,672	\$116,625
Adult Felony Assigned Counsel	\$572,200	\$617,597	\$692,922
Adult Felony Assigned Counsel Appeals	\$35,281	\$29,632	\$25,497
Total Counsel Fees	\$690,135	\$778,666	\$897,040
Licensed Investigation Expenses	\$11,478	\$7,399	\$11,180
Expert Witness Expenses	\$3,428	\$300	\$1,275
Other Direct Litigation Expenses	\$77,070	\$71,518	\$64,177
Total Court Expenditures	\$782,111	\$857,883	\$973,673
Total Administrative Expenses (paid to West Texas Regional Capital Public Defender)	0	\$33,765	\$28,336
Total Indigent Defense Expenditures (court and administrative)	\$782,111	\$925,413	\$1,002,009
Formula Grant Disbursement	\$60,709	\$62,085	\$61,243
Equalization Disbursement	\$54,787	\$5,754	0
Reimbursement of Attorney Fees	\$170,286	\$119,889	\$125,178
Total Contract Counsel Cases	367	284	0
Total Assigned Counsel Cases	1,447	1,826	2,325

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

Scope

The county’s indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grant during fiscal year 2010. The fiscal monitor and grant program specialist reviewed records located in the Midland County courthouse and administration building (district court, statutory county court, and auditor offices’).

Methodology

To accomplish the objectives, the fiscal monitor and grant program specialist met with judges, county auditor, assistant auditor, and court coordinators. The fiscal monitor reviewed:

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

The expenditure period of October 1, 2009 to September 30, 2010 (FY2010) was reviewed during the fiscal monitoring visit.

Midland County's Criminal Courts			
Courts	Courts		Percent Sampled
	Total	Reviewed	
County Court-at-Law	2	2	100%
District Court	5	5	100%

Percent Sampled: courts reviewed / courts total

Summary of Findings

- The county incorrectly placed three (3) other direct litigation expenses (\$242.33) in the attorney fee category of services.
- The county incorrectly placed one (1) expert witness expense (\$400.00) in the licensed investigations category of services.

II. INDIGENT DEFENSE GRANTS

A. Formula Grant

The county submitted the FY2010 indigent defense on-line grant application to assist in the implementation of the provisions of the Fair Defense Act. Midland County met the formula grant eligibility requirements.

B. Extraordinary Grant

In FY2004, the county received \$100,150 in direct reimbursement for providing indigent defense services in a capital murder case, which created a financial hardship on the county. The county provided support documents that substantiated the extraordinary expense.

Midland County Extraordinary Grant				
Grant		Program Description	FY2004	
Title	Type		Award	Funds Disbursed
Extraordinary	Single	Extraordinary indigent defense expenses that constituted a financial emergency relating to a capital murder case (FY02 and FY03).	\$100,150	\$100,150

C. Indigent Defense Expenditure Reporting

Under Section 71.0351 of the Texas Government Code, counties are required to annually submit data showing the cases and respective expenses expended to provide indigent defense services. For FY2010, Midland County reported spending: \$692,922 on 1,513

felony cases; \$116,625 on 440 misdemeanor cases; \$57,449 on 356 juvenile cases; \$4,548 on 6 juvenile appeals cases; and \$25,497 on 10 felony appeals cases.

Monitor Comment

The county maintains fiscal accountability and support documents of formula and extraordinary grants and indigent defense expenditures. The annual indigent expenditure report is critical in establishing grant eligibility.

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).

An attorney appointed to represent an indigent defendant submits an itemized voucher with the types of services performed to the judge with dispositive jurisdiction over the case. Under local rule, this submission must occur within one month of the judgment. Approval of payment is authorized after the judge presiding over the proceeding reviews and signs the voucher. If the judge approves an amount different from the amount requested by the attorney, the judge must make written a finding for each of the new amounts and the reasons for the changes.

After the judge approves a voucher for payment, the voucher is routed to the auditor. The auditor reviews the voucher and issues a check for payment in the amount approved by the judge to the attorney or service provider. The auditor examines and enters the submitted voucher (expenses) and amount of payment for itemized services with each case into the general ledger.

Verification of the Effectiveness of County Procedures

The grant program specialist reviewed the effectiveness of local procedures in tracking misdemeanor cases. He compared indigent defense cases filed in the misdemeanor courts with the cases paid by the county auditor. The grant program specialist found that the county clerk and auditor’s records listed the same cases. Based on local procedures and file comparison, the county clerk’s records and the auditor’s records indicate that indigent defense case totals listed for FY2010 are reliable.

Monitor Comment

Midland County maintains solid procedures for tracking cases in which indigent defense services are rendered. A copy of the accounting procedures relating to indigent defense expenditures was provided to the fiscal monitor.

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 Assigned Counsel Fee Vouchers

A total of 226 paid attorney fee vouchers (176 district courts and 50 county courts-at-law) were reviewed for the period of October 1, 2009 to September 30, 2010.

In FY2010, the attorney fee payments ranged from \$10,250 to \$103,655 per attorney with an average of \$53,573 and a median of \$56,340.

County Courts-at-Law				
14 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
County Court-at-Law	184	\$57,847	25	\$8,000
County Court-at-Law No. 2	363	\$116,575	25	\$9,324
Total	547	\$174,422	50	\$17,324

County Court-at-Law = misdemeanor expenses + juvenile expense + juvenile appeals

\$57,847 = \$40,000 + \$13,299 + \$4,548

County Court at Law No. 2 = misdemeanor expenses + juvenile expenses

\$116,575 = \$72,425 + \$44,150

District Courts				
16 Different Paid Attorneys				
Courts	Total			
	Paid Vouchers	Attorney Fee Vouchers		
		Fees	Reviewed	Reviewed Value
142 nd District Court	418	\$220,814	50	\$28,842
238 th District Court	409	\$236,330	50	\$26,822
318 th District Court	1	\$500	1	\$500
385 th District Court	424	\$217,448	50	\$30,175
441 st District Court	77	\$43,327	25	\$25,040
Total	1,329	\$718,419	176	\$110,879

District Courts = felony assigned counsel + felony assigned counsel appeals
 \$718,419 = \$692,922 + \$25,497

Monitor Comment

All attorney fee vouchers reviewed met the statutory requirements for payment, which states, “no payment shall be made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and approves the payment” in accordance with Article 26.05(c), Code of Criminal Procedure.

The attorney fee vouchers reviewed captured the specific data elements (defendant name, case/cause numbers, court number, offense, amount paid, attorney signature, and presiding judge signature).

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

Investigations, Experts, and Other Direct Litigation Expenditures				
Expenditures	Total Vouchers			
	Paid	FY2010	Reviewed	Reviewed Value
Investigation	23	\$11,180	23	\$11,180
Expert Witness	1	\$1,275	2	\$1,675
Other Direct Litigation	34	\$64,177	10	\$24,870

- (a) As a result of reviewing expenses, the county incorrectly placed three (3) other direct litigation expenses (\$242.33) in the attorney fee category of services. Other direct litigation expenses are services other than counsel that may include but not necessarily limited to, postage, copies, and travel mileage.

Other Direct Litigation Expenses

Services	Check No.	Date	Court	Expense
Defendant’s clothing for trial	65638	11/23/2009	142 nd District Court	\$91.97
Defendant’s clothing for trial	66011	11/12/2009	385 th District Court	\$75.93
Brief printing and postage	65119	12/14/2009	County Court-at-Law	\$74.43
Total				\$242.33

- (b) In addition, the county incorrectly placed one (1) expert witness expense (\$400.00) in the licensed investigations category of services. 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 FY2010).

Expert Witness Expenses

Examination	Check No.	Date	Court	Expense
The Gougler Company (Michael Gougler - Polygraph)	69244	6/28/2010	142 nd District Court	\$400.00

Recommendation

Task Force recommends that the county correctly place other direct litigation and expert witness expenses in the appropriate category of services in accordance with Section 71.0351, Texas Government Code. 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 FY2010, 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.

Midland County Action Plan

Midland County has implemented a two part process to remedy the findings of this review.

- (a.) Attorney Fee Vouchers are now more closely examined for “Other Litigation Expenditures”. These items are separated and noted on the accounts payable batch tallies before being entered into the Indigent Defense Expense Report spreadsheet.
- (b.) After each accounts payable run, the Indigent Defense Expense Report spreadsheet is now reconciled to the General Ledger for each court and line item to ensure that all indigent defense costs have been transferred to the proper category in the Indigent Defense Expense Report spreadsheet. This reconciliation is also performed on a quarterly basis.

Midland County believes these changes in procedures will remedy these misclassifications.

Contact person(s): Veronica Morales, County Auditor

Completion date: May 10, 2011

B. Public Appointment List

1. Approval of Qualified Attorneys by the Judges

A majority of the judges approved the attorneys on the public appointment list.

Monitor Comment

Midland County criminal courts 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

Courts	Number of Attorneys		Percent Sampled
	public appointment list	applications reviewed	
County Courts-at-Law	16	16	100%
District Court	18	18	100%
Juvenile Court	9	9	100%

Percent Sampled: applications reviewed / number on public appointment list

Monitor Comment

Midland County criminal courts maintained attorney applications for placement on the public appointment list in accordance with Article 26.04(d)-(e), Code of Criminal Procedure.

3. Continuing Legal Education (CLE) Requirements

Courts	Number of Attorneys		
	public appointment list	criminal/juvenile CLE documents	
		reviewed	met minimum hours
County Courts-at-Law	16	16	16
District Courts	18	18	18
Juvenile Court	9	9	9

Monitor Comment

Task Force commends Midland County for ensuring that attorneys obtain the CLE hours according to the county’s local plan and Title 1, Chapter 174, Texas Administrative Code.

Midland County Response

Midland County will continue in its efforts to ensure that all attorneys meet the CLE requirements of the county’s local plan and Title 1, Chapter 174, Texas Administrative Code.

V. SUMMARY

General Comments

The Task Force wishes to express its appreciation to local county officials and employees of Midland County for the time and courtesy extended during the fiscal monitoring visit. In particular, my gratitude extends to Judge Michael Bradford, Constitutional County Court; Judge Rodney Satterwhite, Local Administrative District Court; Judge Marvin Moore, Local Administrative Statutory County Court; Ms. Veronica Morales, County Auditor; Ms. Marsha Cooper, Assistant Auditor; and Ms. Nancy Berdoza, Court Administrator, for accommodating the fiscal monitor activities. These activities included providing workspace, allocating employee time, and exercising flexibility in meeting the schedule of the fiscal monitor and grant program specialist. Thank you for your time and cooperation during the monitoring visit.

Midland County Response

Midland County wishes to thank Ms. Carol Conner, Mr. Dominic Gonzales and the Indigent Defense Task Force for their time and efforts extended for this fiscal monitoring visit. Midland County sees this visit as an opportunity to improve compliance with the requirements of the Indigent Defense Task Force Grant.

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 any applicable requirements under Articles 11.071 and 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
- (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. 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:

- (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.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner

provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

- (1) the alternative program may:
 - (A) use a single method for appointing counsel or a combination of methods; and
 - (B) use a multicounty appointment list using a system of rotation; and
- (2) the procedures adopted under Subsection (a) must ensure that:
 - (A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:
 - (i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in misdemeanor cases punishable by confinement; and
 - (ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;
 - (B) attorneys appointed using the alternative program to represent defendants in felony cases:
 - (i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in felony cases; and
 - (ii) are approved by a majority of the judges of the district courts trying felony cases in the county;
 - (C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and
 - (D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) In a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) A court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused of a felony may appoint an attorney from any county located in the court's administrative judicial region.

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.