



FORT BEND COUNTY
Fort Bend County, Texas

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December 19, 2011

Texas Indigent Defense Commission
205 West 14th Street Suite 700
Tom C. Clark Building
P.O. Box 12066
Austin, Texas 78711-2066

Re: Responses to Memorandum dated August 16, 2011

Dear Commission:

The information provided herein is pursuant to the Texas Commission on Indigent Defense's ("Commission") memorandum dated August 16, 2011. The memorandum outlines 14 recommendations detailing changes the Commission believes are necessary to comply with the Fair Defense Act.

The District Judges, Court-at-Law Judges, and Criminal Defense Attorneys Association of Fort Bend County have formulated the following responses to the recommendations suggested by the Commission.

Responses - Segregated by the Responsible, Implementing Courts:

A. Fort Bend County District Courts (Felonies) and County Courts at Law (Misdemeanors):

Recommendation 1: Fort Bend County must adjust its internal procedures so that the County may annually submit accurate totals of appeals cases paid, appellate expenditures, and misdemeanor cases paid.

Response: The voucher system used for the payment of attorneys, as adopted, provides for payment for work completed by the attorney as outlined on the voucher or on attached documentation from the attorney. A review of the attorney information determines whether it is for appellate work or trial work. For reporting purposes (and for the Auditor's benefit) a coding process will be developed by the Auditor to delineate between appellate and trial work and, for County Court at Law appointments, to also denote "Attorney of the Day" appointment and payment method.

Recommendation 2: Fort Bend County must ensure that magistrate warnings occur within 48 hours of the arrest.

Response: District Judges and County Court at Law Judges will continue to monitor the performance levels of the magistration process to insure compliance with legal requirements and the Fort Bend County Indigent Defense Plan.

Fort Bend County Responses Continued:

Recommendation 4: 1) Indigence determinations must fall in line with *Abdnor v. State* and may only consider the income of persons legally bound to pay for the defendant's legal expenses. 2) Indigence determinations may not consider whether a defendant has posted bond, except to the extent that it reflects the defendant's financial circumstances.

Response: The Courts will adhere to the Indigent Defense Plan to determine a person's indigency. A defendant who is initially found not to be qualified for a court appointed counsel, but who remains without counsel, will be re-evaluated by the Court and/or the Indigent Defense Coordinator to determine whether or not that defendant is unable to hire an attorney because of financial considerations.

Recommendation 8: Attorneys who are not eligible to receive appointments because of failure to meet Commission requirements must be removed from the appointment list and may not receive appointments until Commission requirements are met.

Response: The Fort Bend County Indigent Defense Plan provides for the annual review of CLE requirements for attorneys to remain on the appointment list. Additionally, a procedure will be developed for the judges to annually review the appointment list for performance by the attorneys and for adherence by the attorneys to at least minimum performance standards and for compliance with the requirements for appointment as set forth in the plan. A procedure will be implemented for the Indigent Defense Coordinator to recertify attorneys each year for continuation on the appointment list and submit same to the judges for approval.

The development of less experienced lawyers is of extreme importance to the Courts and to the quality of representation to indigent defendants. Newly licensed or inexperienced lawyers need the skill that only practice can provide. In coordination with the local Fort Bend County Criminal Defense Bar Association, a 'Second Chair' program is being developed to allow less experienced attorneys to sit with a qualified attorney from the approved list at trial. Such a program is essential to the development of effective indigent defense.

Recommendation 9: Fort Bend County must ensure that counsel is appointed to misdemeanor and felony defendants within one working day of request (plus 24 hours allowed to transfer the request to the appointing authority).

Response: There is and will continue to be monitoring of the timely appointment of counsel to indigent defendants. To assist the Indigent Defense Coordinator in those responsibilities, a computerized method will be investigated to automate this process.

B: Fort Bend County Courts at Law (Misdemeanors):

Recommendation 5: The misdemeanor courts must provide a method of appointment so that all persons who require appointment of counsel have the ability to consult with their attorney sufficiently in private in advance of proceeding. While a defendant may instead choose to plead to a case on the day of the appointment, the defendant must be provided counsel who will continue to represent the defendant if the defendant chooses not to plea to the case.

Response: The misdemeanor courts (Fort Bend County Courts at Law) will prepare and submit an amendment to the Indigent Defense Plan which amendment will detail the procedure for appointing an attorney as "Attorney of the Day" in the misdemeanor courts. That "Attorney of the Day" plan will be followed by the County Courts at Law in all misdemeanor cases. Such "Attorney of the Day" plan will insure that the Attorney who is appointed as the attorney of the day will have adequate time to visit with each defendant. The County Courts at Law will only appoint an attorney of the day from the list of approved attorneys who are qualified and listed pursuant to the Fort Bend County Indigent Defense Plan.

The "Attorney of the Day" program was implemented by the County Courts at Law after passage of legislation forbidding prosecutors to confer with unrepresented indigent defendants unless those defendants

Fort Bend County Responses Continued:

had waived their right to counsel. This attorney who is appointed as “Attorney of the Day” only performs the following duties for individuals who are present without counsel:

1. Determines if the individual arraigned will hire counsel; or
2. Determines if the individual arraigned needs to apply for appointed counsel; or
3. Determines whether or not the individual arraigned desires to waive the right to counsel.

NOTE: The attorney assigned under this program is **not** authorized to represent the arraigned person in negotiations with the State, nor to give the arraigned person legal advice. The attorney of the day does not have time to review each individual file. The “Attorney of the Day” program provides a constitutional safeguard to each arraigned individual’s right to self-representation, the right to hire a private attorney, and/or the right to apply for appointed counsel. It is not designed nor intended for the attorney appointed as “Attorney of the Day” to represent an accused defendant as a trial counsel at succeeding court appearances. The number of persons arraigned on any given day would overwhelm any attorney assigned under this program if the County Courts at Law were to require that attorney to represent each arraigned defendant through disposition.

Recommendation 6: The courts must make all appointments of counsel from an approved appointment list in accordance with the local indigent defense plan and with Article 26.04(b) (5).

Response: The Fort Bend County Courts at Law use the Fort Bend County Indigent Defense Plan for appointment of counsel. In any instance in which the next lawyer in sequence does not possess the necessary qualifications for appointment to that specific case, the Court will follow the requirements of Article 26.04 in making the necessary appointment. All indigent defendants are entitled to effective representation by counsel.

Recommendation 13: The indigent defense plan must describe Fort Bend County’s use of the attorney-of-the-day system.

Response: See response to Recommendation 5.

Recommendation 14: Attorney-of-the-day appointments must be consistent with Article 26.04(j) (2).

Response: See response to Recommendation 5.

C. Fort Bend County Courts at Law (Sitting as Juvenile Courts):

Recommendation 3: As required by Section 54.01(b) of the Family Code, the juvenile court must inform the parent or guardian of the child’s right to counsel and to appointed counsel if indigent.

Response: Fort Bend County will continue to timely inform the parent or guardian of the child’s right to counsel and document said action with the appropriate form.

Recommendation 7: The courts must make all appointments of counsel from an approved appointment list in accordance with the local indigent defense plan, with Article 26.04(b) (5) of the Code of Criminal Procedures, and with Section 51.102 of the Texas Family Code.

Response: See response to Recommendation 6, above. Further, the County Courts at Law (sitting as Juvenile Courts) will assign attorneys pursuant to the requirements of Family Code Section 51.102 and the Texas Criminal Code of Criminal Procedure, Art. 26.04 under attorney qualifications which will be formally adopted and incorporated into the Fort Bend County Indigent Defense Plan. All appointments of counsel will be made pursuant to those qualifications, the Fort Bend County Indigent Defense Plan, Article 26.04(b)(5) of the Code of Criminal Procedure, and with Section 51.102 of the Family Code.

Fort Bend County Responses Continued:

With respect to the current appointment of attorneys to indigent juvenile offenders, each court maintains a roster of lawyers, competent to represent juveniles. Since the judge of the court sits in *loco parentis* to the child accused, each case must be matched to counsel who is able to effectively represent that child. Such appointments are extremely sensitive to the needs of the juvenile and a just result. Although the Commission has reported situations where appointment of counsel to indigents has been abused in other jurisdictions, such is not the case in Fort Bend County. The County Court at Law Judges who preside over all Juvenile cases currently have an approved and qualified list of attorneys for appointment on a non-discriminatory, fair and neutral basis. The qualifications for inclusion on that list for appointment will be revised and formally placed into the Fort Bend County Indigent Defense Plan.

Recommendation 10: If an attorney is appointed for a detention hearing, the attorney must continue to represent the juvenile until one of the three conditions of Section 51.101 of the Family Code is met (case is terminated, family retains attorney, or new attorney is appointed by the juvenile court).

Response: The County Courts at Law (sitting as Juvenile Courts) will comply with the statutory requirements of Texas Family Code Section 51.101 (a)-(b) pertaining to the time duration of the attorney's appointment.

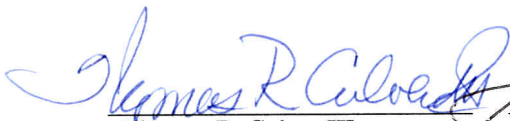

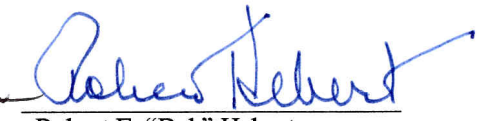
Recommendation 11: If the child is not represented by counsel at the detention hearing and there was a decision to detain the child, the court must appoint counsel or order the parent to retain counsel. Section 51.10(c) of the Family Code requires that if the child was not represented by counsel at the detention hearing and there was a decision to detain the child, the child is entitled to immediate representation by an attorney.


Response: See response to Recommendation 10, above. Further, the County Courts at Law (sitting as Juvenile Courts) will comply with the statutory requirements of Texas Family Code Section 51.10(c) and Article 26.04(b)(5) of the Code of Criminal Procedure.

Recommendation 12: The Juvenile Courts must appoint counsel within five working days of the petition being served on the juvenile as required by Section 51.101(d) of the Family Code

Response: See response to Recommendation 10, above. Further, the County Courts at Law (sitting as Juvenile Courts) will comply with the statutory requirements of Texas Family Code Section 51.10(d) and Article 26.04(b)(5) of the Code of Criminal Procedure.

Respectfully Submitted,

		
Thomas R. Culver III Local Administrative District Judge Judge, 240 th District Court	Ben W. "Bud" Childers Local Administrative County Court at Law Judge Judge, County Court-at-Law #1	Robert E. "Bob" Hebert County Judge Chairman, Fort Bend County Juvenile Board


Raquel Levy
Fort Bend County Indigent Defense
Coordinator

Cc: Brian Middleton, Representative
Fort Bend County Criminal Defense Bar Association