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HARRIS COUNTY DISTRICT COURTS
TRYING CRIMINAL CASES

STANDARDS AND PROCEDURES
APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

PREAMBLE

WHEREAS, Harris County and the District Courts Trying Criminal Cases in Harris County seek to ensure that indigent defendants continue to receive well-qualified and knowledgeable representation by their appointed counsel; and

WHEREAS, the 77th Texas Legislature passed the Fair Defense Act effecting procedures and guidelines for the appointment of counsel for indigent defendants by amending the Texas Code of Criminal Procedure, section 6, article 26.04 to become effective January 1, 2002;

NOW BE IT RESOLVED that the Judges of the District Courts Trying Criminal Cases, by formal action hereby:

- 1) adopt standards for determining indigency;
- 2) establish procedure to compile a public appointment list of attorneys qualified to provide representation to indigent defendants;
- 3) establish a procedure to compile graduated lists of qualified attorneys;
- 4) adopt objective qualifications necessary for an attorney to be included on the list;
- 5) establish appointment procedures that shall ensure appointments are reasonably and impartially allocated among qualified attorneys;

ACCORDINGLY, the Judges of the District Courts Trying Criminal Cases adopt the following plan as the alternative plan for appointing counsel for indigent defendants in the District Courts of Harris County, Texas.

The Judges of the District Courts Trying Criminal Cases also ORDER this plan be incorporated into the local rules of the Judicial District Courts of Harris County District Courts Trying Criminal Cases.

0.0 **TERMINOLOGY.** As used in these procedures, the following terms and phrases will have the following meanings.

0.1 "Judges" or "board of judges" shall mean the District Courts Trying Criminal Cases in Harris County.

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- 0.2 The pronoun “he” shall refer to individuals of both genders.
- 0.3 “Master List” shall mean the list of qualified attorneys who have received approval by a majority vote (12 votes) from the board of judges to be included on the graduated list that includes the First Degree List, the Second Degree List, the Third Degree List and the Post-Conviction List.
- 0.4 “HCPD” shall mean the Harris County Public Defender, his Office, or his Designee.

1.0 FINANCIAL STANDARDS FOR DETERMINING INDIGENCY. The indigency standards adopted by the judges shall apply to each defendant equally, regardless of whether the defendant is in custody or out on bail.

- 1.1 A judge shall consider the following criteria as incorporated by the form adopted by the board of judges in determining whether a defendant is indigent:
 - 1.1.1 the defendant’s income;
 - 1.1.2 source of income;
 - 1.1.3 assets,
 - 1.1.4 property owned,
 - 1.1.5 outstanding obligations,
 - 1.1.6 necessary expenses;
 - 1.1.7 the number and ages of dependents, and
 - 1.1.8 spousal income available to the defendant.
- 1.2 The judge shall not consider whether the defendant has posted bail, except to the extent that it reflects the defendant’s financial circumstances. All defendants on bail who are seeking court appointed counsel shall complete the approved indigency information form and may be required to respond to questions by the court.

- 1.3 A defendant who has been found indigent is presumed indigent for the duration of the proceedings unless there is a material change in the defendant's financial circumstances.
- 1.4 Procedures for determining indigency:
 - 1.4.1 A defendant is considered indigent for purposes of the Act if he is financially unable to hire counsel.
 - 1.4.2 To determine whether a defendant is indigent, a judge shall:
 - 1.4.2.1 review the information provided by the defendant and contained in the completed form adopted under 1.1; and
 - 1.4.2.2 if necessary, hold an evidentiary hearing on the record to determine whether defendant is indigent.
 - 1.4.3 Using the approved criteria, the judge shall determine whether the defendant is indigent and make findings.
 - 1.4.3.1 The judge shall find defendant indigent and appoint counsel to represent defendant:
 - 1.4.3.1.1 if the judge finds the defendant's financial liabilities are more than his assets, and
 - 1.4.3.1.2 if the judge finds the defendant is financially unable to pay for an attorney qualified to represent the defendant in the offense with which he is charged.
 - 1.4.4 There shall be a presumption of indigency if the income of the defendant is below 125 percent of the Federal Poverty Guidelines.

2.0 WHEN THE RIGHT TO APPOINTED COUNSEL ATTACHES.

- 2.1 **If the defendant is arrested pursuant to a warrant:**
 - 2.1.1 The detaining authority must present the defendant before the magistrate within 48 hours of arrest.
 - 2.1.2 The magistrate shall: deliver admonishments; inform the defendant of the right to counsel; record whether the defendant

requested appointed counsel; and make a finding of probable cause. See TEX. CODE CRIM. PRO. Art. 15.17(e).

2.1.3 If needed, an interpreter shall assist during the hearing.

2.1.4 If the defendant asks that a lawyer be appointed, the magistrate shall instruct pre-trial services to assist the defendant in filling out the indigency information forms and request for appointed counsel. The defendant's information and request for counsel shall be transmitted to the court not later than 24 hours after defendant appears before the magistrate. See TEX. CODE CRIM. PRO. Art. 15.17(a).

2.1.5 Pre-trial services shall assist the defendant with completing the indigency information forms.

2.2 **If the defendant is in jail after being arrested without a warrant** for a felony, and the magistrate has not determined probable cause, the defendant must be released on bond, not to exceed \$10,000, not later than 48 hours after arrest.

2.3 If the defendant cannot get a surety for the bond or is unable to deposit money in the amount of bond, the defendant must be released on personal bond.

2.4 If the prosecutor files an application, a magistrate may postpone the release of a defendant for not more than 72 hours after arrest.

2.5 **Prompt Appointment of Counsel.** If adversarial judicial proceedings have been initiated, and if a defendant is entitled to and requests appointed counsel, a court shall appoint counsel as soon as possible, but not later than the end of the first working day after the date on which the court receives the defendant's request for appointment of counsel.

2.6 Persons appearing in court without counsel shall be advised of the right to counsel and procedures for obtaining counsel.

3.0 APPOINTMENT OF COUNSEL TO REPRESENT INDIGENT DEFENDANTS.

General Provisions:

- 3.1 The judge of each court shall post in writing in the office of the Court Administrator, the method used by the court to appoint counsel to represent indigent defendants. A court may use any of the alternative methods described below to make appointments.
- 3.2 An attorney assigned to a case under any method shall zealously represent a defendant until the defendant is acquitted, appeals are exhausted, or the court, after entering a finding of good cause on the record, relieves the attorney and/or replaces the attorney with other counsel.
- 3.3 The court is responsible for notifying an appointed attorney of his assignments.
- 3.4 Regardless of its adopted appointment method, the court may make individual case assignments at any time.

4.0 LISTS OF QUALIFIED ATTORNEYS.

- 4.1 **DEATH PENALTY CASES:** Attorneys shall be assigned to death penalty cases at trial and on appeal from the list established by the Second Judicial Administrative Region selection committee in accordance with Tex. Code Crim. P. art. 26.052. Attorneys shall be assigned to writs of habeas corpus in death penalty cases in accordance with Tex. Code Crim. P. art. 11.071.
- 4.2 **MASTER LIST:** To be considered for placement on the **Master List**, **each** attorney must submit a completed application form and meet the following baseline criteria:
 - 4.2.1 Be licensed and in good standing with the State Bar of Texas;
 - 4.2.2 Have practiced in the area of criminal law for at least **two (2)** years;

- 4.2.3 Pass the certification test with a score of at least 75 except attorneys already board certified in criminal law by the Texas Board of Legal Specialization are exempted from the local certification test;
- 4.2.4 Exhibit proficiency and commitment to providing quality representation to criminal defendants;
- 4.2.5 Demonstrate professionalism and reliability when providing representation to criminal defendants; and
- 4.2.6 Average **ten (10)** hours a year of continuing legal education courses or other training relating to criminal law.

4.1.6.1 Reporting of continuing legal education activity. An attorneys' annual reporting period shall run from October 31 to October 30. On or before October 31 of each year, attorneys must tender a copy of the State Bar of Texas Minimum Continuing Legal Education Annual Verification Report to the Administrative Offices of the District Courts accompanied by an affidavit verifying that the report is true and correct. If there are errors in or additions to the Verification Report, the attorney may amend the report by submitting any necessary supporting documentation, affidavits, or appendices.

4.3 **GRADUATED LISTS:** Attorneys shall be placed on the Master List in graduated lists of First Degree, Second Degree, Third Degree and Post-Conviction:

4.3.1 **FIRST-DEGREE LIST:** Lawyers on the first-degree list may represent defendants charged with first-degree felonies, any offense listed under TEX. CODE CRIM. PRO. Art. 42.12 § 3g, or any lesser offense. In addition to the baseline criteria, first-degree lawyers must have

4.3.1.1 practiced criminal law for at least **five (5)** years; and

4.3.1.2 tried to verdict at least **eight (8)** felony jury trials as **lead counsel**; and.

4.3.1.3 been accepted as competent to receive first-degree felony appointments by majority vote of the judges.

4.3.2 SECOND-DEGREE LIST: Lawyers on the second-degree list may represent defendants charged with second-degree felonies or any lesser offense. In addition to the baseline criteria, second-degree lawyers must have

4.3.2.1 practiced criminal law for at least **four (4)** years; and

4.3.2.2 have tried to verdict at least **four (4)** felony jury trials as lead counsel.

4.3.3 THIRD-DEGREE LIST: Lawyers on the third degree list may represent defendants charged with third-degree felonies, state jail felonies, motions to revoke probation, and motions to adjudicate guilt. In addition to the baseline criteria, third degree lawyers must have tried to conclusion at least **three (3)** criminal jury trials as lead counsel.

4.3.4 POST-CONVICTION LIST: Lawyers on the Post-Conviction List may be appointed to direct appeals and writs in non-capital cases. In addition to the baseline criteria, Post-Conviction lawyers must:

4.3.4.1 be board certified in criminal law by the Texas Board of Legal Specialization; or

4.3.4.2 have personally authored and filed at least **five (5)** criminal appellate briefs or post-conviction writs; or

4.3.4.3 may submit a writing sample for approval by a committee of the district judges.

4.4 The Harris County Public Defender's Office shall be placed on the Master List and on the Graduated Lists of First Degree, Second Degree, Third Degree and Post Conviction.

5.0 COMPILATION OF MASTER LIST.

- 5.1 Attorney Application and Approval: Attorneys must complete and submit an application for inclusion on the Master List. Attorneys meeting the baseline criteria and approved by a majority of the judges will be placed on the Master List. An individual who has served at least 48 months as a district court judge trying criminal cases as of December 31, 2008, shall be exempt from taking the certification exam and shall be placed on the master list of attorneys approved to represent defendants charged with first degree felonies upon proper application.
- 5.2 Voting Will Be By Secret Ballot. Judges will vote “approved” or “not approved” or will designate a proxy vote as to each applicant. In casting his vote each judge shall also indicate whether an applicant is competent to be assigned to the requested appointment category or should be assigned to another category of appointments. If an applicant is not approved by majority vote for one category, but the majority does approve him for other appointment categories, the applicant shall be approved for the lesser appointment category.
- 5.3 Majority Vote for Inclusion: A majority vote (12 votes) of “approved” is necessary for an attorney to be included on the Master List. Blank and tardy ballots will be deemed “not approved” votes.
- 5.4 Placement on Graduated Lists: Applicants approved by a majority of the judges for the Master List will be placed on the graduated lists according to adopted criteria. Judges will make appointments for indigent defendants in non-capital cases only from the graduated lists of approved attorneys.
- 5.5 New Applications: The judges will consider new applications for the Master List in May of each year.

- 5.6 Annual Update: Attorneys shall report any material changes in their information before May 1 of each year. The Master List and graduated lists will be updated annually in May.
- 5.7 Attorney Requests for Classification Review: Attorneys asking the board of judges to reconsider their classification on the graduated lists shall submit a new application. Upon review of the completed application, the board of judges may 1) upgrade applicant's classification; 2) downgrade applicant's classification; 3) leave applicant's classification unchanged, or 4) remove applicant from the **Master List**.
- 5.8 Appeals: An applicant may appeal his omission from or placement on the **Master List**. At any time within **thirty (30)** days after an applicant receives (by certified mail) notice of his placement or omission from the Master List, the applicant may give written notice of appeal to the Central Appointment Coordinator. Upon receipt of a notice of appeal, the Central Appointment coordinator shall verify the accuracy of the votes for the applicant and the accuracy of an attorney's omission from or placement on the **Master List**. If review of the votes and **Master List** indicate an error, the Central Appointment Coordinator shall make the necessary corrections or modifications. Within **fourteen (14)** days receipt of applicant's notice of appeal, the Central Appointment Coordinator shall notify the applicant of his status as to the **Master List**.

6.0 REMOVAL FROM OR RECLASSIFICATION OF ATTORNEYS ON THE MASTER LIST. A majority of judges may remove from or reclassify an attorney on the Master List upon a finding of good cause. An attorney may be removed from the list if he intentionally or repeatedly does not fulfill his duties in representing indigent defendants. An attorney may also be removed from the list as outlined in 11.10 or reclassified as outlined in 5.7.

7.0 METHODS OF APPOINTMENT.

- 7.1 Individual Case Appointment Method. A private attorney, acting as an independent contractor and compensated with public funds, is appointed to provide legal representation and services to an indigent defendant. See also 3.4.
- 7.2 Term Assignment Method. A private attorney acting as independent contractor and compensated with public funds is assigned to provide legal representation and services to indigent defendants for a specified period of time lasting more than one week but no more than one year. Courts utilizing this method must specify applicable qualification criteria. **Sixty (60)** days before the beginning of a term assignment, a court shall post an announcement of the term appointment and notice of the requisite attorney qualifications on the District Courts' website.
- 7.3 Limited Term Assignment Method. A private attorney, acting as an independent contractor and compensated with public funds, is appointed to provide legal representation to indigent defendants who appear before a court for a period of **one (1)** day or **one (1)** week.
- 7.4 Combination Method. Court may use any combination of the approved methods to appoint attorneys.

8.0 PROCEDURES FOR ATTORNEY ASSIGNMENT.

- 8.1 Consistent with these adopted procedures, each judge may choose any attorney or the HCPD from the Lists of Qualified Attorneys in Section 4.0 for assignment. The procedures shall take into account (1) the availability of the attorney or the HCPD; (2) the individual qualifications of the attorney with respect to the nature of the case; (3) a reasonable and impartial allocation of appointments among the attorneys qualified to accept appointments.
- 8.2 The judges shall select a Central Appointment Coordinator to implement the Harris County District Courts' alternative appointment procedures.

- 8.3 ATTORNEY REQUESTS FOR APPOINTMENTS. Attorneys, including the HCPD, whose names appear on the Master List of Qualified Attorneys shall submit requests to be considered for appointments to the Central Appointment Coordinator by way of computer in the District Court Administrative Office or through the Internet. An attorney, including the HCPD, may access the sign-up program by entering his bar card number. Before the system will accept the request, the attorney must enter a current telephone and/or pager number and, when applicable, an updated address and contact information. All requests must include the following information: (1) Name and bar card number; (2) Telephone, pager, and fax numbers and e-mail address (if available); (3) Specific dates available; (4) Types of assignments sought (individual case assignments, daily or weekly limited term assignments).
- 8.4 Time for Requesting Appointments: An attorney, including the HCPD, may request assignments between 8:15 a.m. Monday and 3 p.m. Thursday of each week. Attorneys may submit assignment requests for no more than **four (4)** weeks at a time. The HCPD may submit requests consistent with the office's workload capacity.
- 8.5 Restrictions:
- 8.5.1 Attorneys may not accept overlapping term or limited term assignments at the trial level. They may accept appellate term assignments that overlap with trial level limited term assignments.
- 8.5.2 Acceptance of a limited term assignment shall preclude an attorney from accepting a non-capital individual case trial level assignment during the limited term.
- 8.5.3 Acceptance of a term assignment at the trial level shall preclude an attorney from accepting any other assignments during that term, except for capital case and appellate assignments.

8.5.4 Under a term or limited term assignment, an attorney may be appointed to defend no more than **five (5)** defendants a day in new cases.

8.5.5 Attorneys who are not employed by the HCPD may not accept more than **two (2)** individual case assignments in one day.

8.6 Duties of Newly Appointed Attorney: Each appointed attorney, including the HCPD, shall make every reasonable effort to contact the defendant no later than the end of the first working day after the appointment and to interview the defendant as soon as practicable.

8.7 Attorney Requests for Individual Case Assignments. Attorneys, including the HCPD, requesting individual case assignments shall submit their requests to the Central Appointment Coordinator.

8.8 Attorney Requests for Term Assignments: Attorneys requesting term assignment shall submit their requests to be appointed to the Central Appointment Coordinator no later than 3:00 p.m. on the first Thursday in December for consideration for assignment for the term beginning January of the following year.

8.9 Attorney Requests for Limited Term Assignments: Attorneys requesting limited term assignments shall submit their applications to the Central Appointment Coordinator no later than 3:00 p.m. Thursday for assignment consideration.

9.0 COURT ASSIGNMENT OF ATTORNEYS.

9.1 Individual Case Assignments: When submitting a request for an attorney, the court's request shall designate: (1) the ranking of the attorney needed; (2) the date of the assignment; (3) any special requests (bilingual, etc.).

The computer shall provide to the court ten randomly selected names, including the HCPD as appropriate, per request. A court requesting an attorney for individual case assignment may submit two requests at a

time provided that the requests specify different criteria. A court may not submit another request until at least one attorney has been assigned from one of the one or two pending lists and the remaining names from that list have been returned to the attorney pool. See also 3.4. The HCPD shall be placed in the automated system as many times as necessary to achieve adequate workload for the HCPD without exceeding its available resources.

9.2 Term Assignments: Beginning at 3:30 pm on the first Thursday of December, courts may submit requests for attorneys available for term assignments. Courts may make assignments from among the available attorneys who meet the court's criteria for term appointments.

9.3 Limited Term Assignments: Courts may submit requests for attorneys available for limited term assignments at any time prior to 3:00 p.m. on Thursday of each week. Courts shall designate the term and date of the assignment.

9.3.1 The computer program shall equally divide the pool of attorneys available for limited term assignments among the requesting courts. The program shall provide the randomly selected names to the requesting courts beginning at 3:30 p.m. on Thursday.

9.3.2 The Court shall make at least one limited term assignment from the provided names and promptly, but not later than noon on Wednesday, return the remainder to the pool available for limited term assignments.

9.3.3 In the event the selected attorney becomes unavailable, or an additional attorney is needed, the court may submit an additional request. The computer shall provide the court with no more than **six (6)** randomly selected names from the remaining pool of available attorneys after noon on Wednesday.

10.0 FEE SCHEDULE.

- 10.1 Each court shall pay appointed attorneys reasonable fees in accordance with a uniform schedule of fees as adopted by the majority of the judges.
- 10.2 The uniform schedule of fees shall take into consideration reasonable and necessary overhead costs, the availability of qualified attorneys, time and labor expended, complexity of the case, and the experience and ability of counsel.
- 10.3 An attorney working under a term appointment shall be paid for work actually performed or for days actually in court.
- 10.4 The HCPD shall be compensated in accordance with its budget as set by Harris County Commissioners Court.

11.0 APPOINTED ATTORNEY COMPENSATION.

- 11.1 Appointed counsel shall be compensated for all work on behalf of a defendant, including habeas corpus proceedings, appellate work, and motions for rehearing.
- 11.2 Compensation shall be based on:
 - 11.2.1 the time and labor required;
 - 11.2.2 the complexity of the case, and
 - 11.2.3 the experience and ability of counsel.
- 11.3 Appointed counsel shall be paid a reasonable attorney's fee for performing the following services:
 - 11.3.1 time spent in court making an appearance on behalf of the defendant as evidenced by docket entry;
 - 11.3.2 time spent in trial;
 - 11.3.3 time spent in a proceeding in which sworn oral testimony is elicited;
 - 11.3.4 reasonable and necessary time spent out of court on the case, supported by any documentation the court requires;

- 11.3.5 preparation of an appellate brief, preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and
- 11.3.6 preparation of motions for rehearing.
- 11.4 An attorney shall not be paid until the attorney submits a complete, itemized form detailing services performed to the judge presiding over the proceedings and the judge approves the payment.
- 11.5 If the judge disapproves the requested amount, the judge shall make written findings stating the amount of payment approved and the reasons for approving an amount different from the requested amount.
- 11.6 The attorney whose request for payment has been disapproved may, by written motion, file an appeal with the presiding judge of the administrative region. The presiding judge may conduct a hearing and forward the results of the hearing to commissioners for court.
- 11.7 Non-capital counsel shall be reimbursed for reasonable and necessary expenses, including expenses for investigation, mental health and other experts.
- 11.8 Expenses incurred with prior court approval shall be reimbursed in the same manner provided for in the Code of Criminal Procedures for capital cases.
- 11.9 Expenses incurred without prior court approval shall be reimbursed in the same manner as provided in capital cases under Article 26.052(h) of the Code of Criminal Procedure.
- 11.10 A majority of the judges who established the qualified attorney list 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. An attorney may also be removed from the list as outlined in 6.0.

11.11 The HCPD's compensation and expenses shall be paid from the HCPD's budget as set by Commissioners Court.

The **Standards and Procedures for Appointment of Counsel for Indigent Defendants** were adopted by two-thirds vote of the Judges of the District Courts Trying Criminal Cases in Harris County on October 16, 2001, and incorporates changes suggested by the Presiding Judge of the Second Administrative Judicial Region. The plan was amended July 10, 2002, September 4, 2002, December 3, 2003, February 4, 2004, November 3, 2004, January 5, 2005, June 8, 2005, November 15, 2005, July 25, 2008, August 8, 2008, December 3, 2008, September 2, 2009, January 12, 2001, July 15, 2011, and December 6, 2011.

Signed: December 6, 2011.



BELINDA HILL,
Administrative Judge, Criminal Division