

**TEXAS FAIR DEFENSE ACT  
HARRIS COUNTY DISTRICT COURTS**

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**APPLICATION  
FOR COURT APPOINTMENTS TO NON-CAPITAL FELONY CASES  
MAY, 2017**

**NOTE: This application is for attorneys who are not currently approved for felony appointments in the Harris County District Courts Trying Criminal Cases.**

Follow the instructions in each section carefully. Please ensure that your responses are legible.

You must submit a **signed and notarized** application, photo in digital format, MCLE report and any other required documentation, to [fdams@justex.net](mailto:fdams@justex.net) **by 5:00 p.m. on Friday, May 19<sup>th</sup>, 2017**. Paper copies will **not** be accepted.

**Late or incomplete applications will not be accepted.**

The Certification Exam is scheduled for **Wednesday, May 24<sup>th</sup>, 2017 from 12:30p-4p** at the Harris County Jury Plaza 1201 Congress. A Study Guide is included with this application. **ELECTRONIC DEVICES SUCH AS LAPTOPS and PDAs ARE NOT ALLOWED IN THE EXAM ROOM. IPHONES, BLACKBERRYS AND OTHER INTERNET READY PHONES MUST BE PUT AWAY WHILE IN THE EXAM ROOM.**

**Please bring at least two #2 pencils to the exam.**

**Required Application Attachments**

**(Must be sent in the same email with the application)**

1. A recent electronic photograph of yourself. No printed copy photos will be accepted. **Photos must be in JPEG format.** The administrative office will not take photos.
2. Your **most recent** annual CLE report from the State Bar in electronic format (PDF or Microsoft Word).
3. An electronic (PDF or Microsoft Word) copy of an appellate brief or a post-conviction writ you authored and filed. **(Only required if applying for appellate appointments.)** Paper copies will not be accepted.
4. Any other documents specified in the application. Please also include an electronic MS Word or PDF document that contains written explanations if you have ever:
  - a. been sanctioned by the State Bar Grievance Committee.
  - b. been sanctioned for failure to appear before a court.
  - c. admitted, in connection with an official proceeding, to having provided ineffective assistance of counsel.
  - d. been convicted or placed on deferred adjudication for any offense other than traffic offenses.

**INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED.**

# **PREPARING FOR THE 2017 CERTIFICATION EXAM**

## **General Information**

The test consists of 100 multiple choice or true/false questions. It is an open book test: You may bring in hard copy, written materials but no electronic devices. There is a three and one half-hour time limit. That means an average of 2.1 minutes per question.

Read each question carefully. Good reading comprehension will increase your chances of answering correctly. Correct answers are based on current Texas law. A grade of at least 75 is required to pass. The pass rate has historically been about 65%.

Suggested study materials: The Advanced Criminal Law Course, recent US Supreme Court criminal law opinions, recent Texas Court of Criminal Appeals opinions, and Texas statutes and rules including the penal code, code of criminal procedure, rules of evidence and rules of appellate procedure. There are no questions about capital murder.

## **Test topics**

### **I. Pretrial**

#### **A. Bail**

1. Requisites for no bond; duration of no-bond order
2. Statutory factors relevant to setting bond
3. Permitted and required conditions of bond
4. Orders for emergency protection – when required, duration

#### **B. Discovery**

#### **C. Severance – co-defendants, multiple charges**

## D. Suppression

1. Statutory grounds for warrantless searches and arrests
2. When to present suppression motion
3. When must trial court make fact findings
4. Knock and announce rule
5. Purpose of exclusionary rule
6. Attenuation doctrine

## II. Voir dire

- A. Strikes for cause
- B. Necessity of defendant's presence
- C. Commitment questions
- D. Batson v. Kentucky
- E. Veniremember's withholding of information inadvertently vs. in bad faith – does it matter?

## III. Evidence

- A. Scope of cross examination
- B. Admissibility of plea negotiations
- C. Challenging the admissibility of extraneous offenses
- D. Hearsay and confrontation; Crawford
- E. Privilege against self-incrimination in context of insanity defense – what right does State have submit your client to examination by an expert of its choosing?
- F. Admissibility and effect of juvenile adjudications in adult proceedings
- G. Confessions
  1. Miranda v. Arizona vs. Article 38.22
  2. Standard and burden of proof in confession hearings
- H. Rule of witnesses, exceptions

- IV. Jury charges
- V. Sentencing
  - A. Credit for time served
  - B. Probation
    - 1. Mandatory probation
    - 2. Sex offender terms and conditions
    - 3. Eligibility from court vs. from jury
    - 4. Eligibility for various offenses, e.g., perjury in a confession hearing
  - C. Cumulative sentencing – when allowed
  - D. Enhancements
- VI. Immigration consequences
  - A. Grounds for removal or inadmissibility
  - B. What constitutes a conviction for immigration law purposes
  - C. Padilla v. Kentucky
- VII. Appellate procedure
  - A. Preservation of error
  - B. Perfecting appeal
  - C. Right to appeal
    - 1. Pretrial rulings
    - 2. Guilty pleas
    - 3. Orders denying bail
    - 4. Orders setting bail

D. Motions for new trial

1. Deadline to file
2. Waiver of grounds not alleged
3. How to present
4. Failure to present
5. Deadline to rule
6. Consequences of failure to rule

E. Appellate time tables

F. Brief requirements – page size, page limits, etc.

VIII. Ethics

A. Duty to zealously defend

B. Decisions that belong to the client

C. Plea negotiations

D. Getting paid on appointed cases

1. Truthfulness of voucher
2. Accepting outside compensation on appointed case

Conclusion

This is a hard test. Study for it. Know where to find answers. For example, is the rule of witnesses in the code of criminal procedure or the rules of evidence? Use the full three and one half hours.

**TEXAS FAIR DEFENSE ACT**  
**APPLICATION FOR APPOINTMENTS IN THE HARRIS COUNTY DISTRICT COURTS**  
**May, 2017**

**PART A - GENERAL INFORMATION**  
**(REQUIRED OF ALL APPLICANTS)**

**ATTORNEY CONTACT INFORMATION (Please Print Very Clearly):**

*TITLE:* \_\_\_\_\_

*LAST NAME:* \_\_\_\_\_

*LAST NAME IN JIMS:* \_\_\_\_\_

*(if different)*

*FIRST NAME:* \_\_\_\_\_

*BAR CARD #:* \_\_\_\_\_ *SPN:* \_\_\_\_\_

*PHYSICAL ADDRESS:* \_\_\_\_\_

*(not a P.O. Box)*

*CITY:* \_\_\_\_\_ *ZIP:* \_\_\_\_\_

*MAILING ADDRESS:* \_\_\_\_\_

*CITY:* \_\_\_\_\_ *ZIP:* \_\_\_\_\_

*TELEPHONE #:* \_\_\_\_\_ *FAX #:* \_\_\_\_\_

*PAGER #:* \_\_\_\_\_ *CELL PHONE #:* \_\_\_\_\_

*E-MAIL ADDRESS:* \_\_\_\_\_

**ATTORNEY PROFILE**

**Circle "YES" or "NO". If you circle "YES" for any of Questions 2-8, attach any applicable court or committee documents, copies of all final orders (or those deferring adjudication), judgments, and, if desired, any written explanations.**

- |            |           |   |
|------------|-----------|---|
| <b>Yes</b> | <b>No</b> | 1. Are you currently in good standing with the State Bar?   |
| <b>Yes</b> | <b>No</b> | 2. Are you currently under indictment or charged with a criminal offense?<br>(Do not include class C traffic offenses)      |
| <b>Yes</b> | <b>No</b> | 3. Do you have a pending appeal of any State Bar sanction?  |
| <b>Yes</b> | <b>No</b> | 4. Has the State Bar Grievance Committee ever sanctioned you?   |
| <b>Yes</b> | <b>No</b> | 5. Have you ever been sanctioned for failure to appear before a court?  |
| <b>Yes</b> | <b>No</b> | 6. Have you ever admitted, in connection with an official proceeding, to having provided ineffective assistance of counsel? |
| <b>Yes</b> | <b>No</b> | 7. Have you ever been convicted or placed on deferred adjudication for any offense other than a traffic offense?            |
| <b>Yes</b> | <b>No</b> | 8. Have you ever been found by a court to have rendered ineffective assistance of counsel?                                  |

**What kinds of appointments are you seeking? Check all that apply:**

- 
- ☐ 9. 1st-Degree Felonies
- ☐ 10. 2nd-Degree Felonies
- ☐ 11. 3rd-Degree Felonies (STJF/MRPs/MAJs)
- ☐ 12. Non-Capital Appeals

- Before you may apply for court appointments of any type, you must meet the educational and testing criteria established by the Harris County District Courts. The Harris County District Courts' Administrative Office (DCA) maintains a list of attorneys who have fulfilled these educational and testing requirements.

**ATTORNEY BACKGROUND**

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**Yes**      **No**      13. Are you board certified by the Texas Board of Legal Specialization?

\_\_\_\_\_ 14. If yes, in what area(s)?

**Yes**      **No**      15. Are you a member of the State Bar College?

**Top**      **Bottom**      16. Where did you graduate in your law school class?  
**Half**      **Half**

\_\_\_\_\_ 17. How many years have you been in practice?

\_\_\_\_\_ 18. What was the date of your first court appointment? (Month/Year)

\_\_\_\_\_ 19. How many hours of continuing legal education did you **average the last three years?** **Attach** your latest annual State Bar of Texas CLE report.

\_\_\_\_\_ 20. How many open criminal files are in your current caseload?

\_\_\_\_\_ 21. What percentage of your current practice is in criminal law?

\_\_\_\_\_ 22. What percentage of your current practice is in criminal appointments?

\_\_\_\_\_ 23. *For appellate applicants only:* Approximately how many appeals have you pursued in which **you** authored the brief/post-conviction writ (excluding subcontracted briefs)? **Attach** a copy of a brief/writ *you authored.*

24. Which Harris County district **judges** presided over your last five (5) trials? (Provide the judge's name, not the court number. Your response may be fewer than five. Do not list visiting judges.)

25. Before which Harris County district **judge(s)** have you routinely appeared? (Provide the judge's name, not the court number.)

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### **ATTORNEY TRIAL EXPERIENCE**

Please read each question carefully. Your answers must add up as indicated below. Although you may estimate your response, the response must be in discrete numbers (i.e., 4, 12, 31). Do not answer in ranges (i.e., 5-10, 10-50). Do not answer with phrases such as "more than 20" or "at least 100". If you do not answer the question in the appropriate format, the processing of your application will be delayed.

### **FELONY TRIAL EXPERIENCE**

**Questions 26-34.** These questions refer to the number of criminal cases you have tried to conclusion before a jury. This number should include hung juries, but exclude agreed competency hearings. Include your best estimate of **all** criminal cases you have tried either in Harris County, another county, or in federal courts.

- \_\_\_\_\_ 26. As **first chair**, how many felony criminal cases have you tried to conclusion before a jury?
- + \_\_\_\_\_ 27. As **second chair**, how many felony criminal cases tried to conclusion before a jury?
- = \_\_\_\_\_ 28. **How many total felony criminal cases have you tried to conclusion before a jury. (Add the number you entered for Question 26 to the number you entered for Question 27.)**

### **FEDERAL EXPERIENCE**

- \_\_\_\_\_ 29. As **first chair**, how many federal criminal cases have you tried to conclusion before a jury?
- + \_\_\_\_\_ 30. As **second chair**, how many federal criminal cases have you tried to conclusion before a jury?
- = \_\_\_\_\_ 31. **How many total federal criminal cases have you tried to conclusion before a jury? (Add the number you provided in Question 29 to the number you entered for Question 30.)**



**MISDEMEANOR EXPERIENCE**

- \_\_\_\_\_ 32. As **first chair**, how many misdemeanor criminal cases have you tried to conclusion before a jury?
- + \_\_\_\_\_ 33. As **second chair**, how many misdemeanor criminal cases have you tried to conclusion before a jury?
- = \_\_\_\_\_ 34. **How many total misdemeanor criminal cases have you tried to conclusion before a jury? (Add the number you provided in Question 32 to the number you entered for Question 33.)**

**TOTAL CRIMINAL TRIAL EXPERIENCE**

- \_\_\_\_\_ 35. **What is the total number of criminal cases you have tried to conclusion before a jury? (Add the total numbers from Question 28, Question 31 and Question 34.)**
- \_\_\_\_\_ 36. Of the total cases cited in Question 35, how many criminal cases have you tried to conclusion before a jury **in the last five (5) years?**

**Questions 37-40.** Approximately what percentage of your *total trial* experience has involved the following types of offenses? (N.B.: The percentages do not have to total 100%):

- \_\_\_\_\_ % 37. Sex Offenses
- \_\_\_\_\_ % 38. Drug Offenses
- \_\_\_\_\_ % 39. Property Crimes
- \_\_\_\_\_ % 40. Assaultive Offenses

Indicate areas in which you have unique training or skill. (You may attach any applicable documentation or certification.)

- ☐ 41. Mental health cases
- ☐ 42. Level V deaf interpreter
- ☐ 43. Fluent in the following language(s) other than English:

\_\_\_\_\_

- ☐ 44. Other training or skill (Please describe):

\_\_\_\_\_

**PART B**  
**OPTIONAL INFORMATION**

**ADDITIONAL EXPERIENCE**

List and describe other activities you have participated in that relate to criminal law:

45. Speaking: \_\_\_\_\_

46. Teaching: \_\_\_\_\_

47. Legal Publications: \_\_\_\_\_

48. Please include any other information that you believe makes you uniquely qualified to accept appointments in criminal cases (e.g. participation in criminal law mentoring or peer review programs; AV rated by Martindale-Hubbell, etc. ):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

49. I belong to the following professional organizations or associations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PART C**  
**JURAT**  
**(REQUIRED OF ALL APPLICANTS)**

\_\_\_\_\_  
Applicant's signature

SWORN TO and SUBSCRIBED before me on \_\_\_\_\_(date).

My commission expires:

\_\_\_\_\_  
Notary Public in and for  
The State of Texas