

Harrison County Indigent Defense Plan

Effective Date December 1, 2009 [Revised]

I. Preamble

The undersigned judges adopt the procedures herein with the intent to provide for an appointment list of attorneys using a system of rotation to insure that indigent accused persons receive timely and competent representation and that appointments are allocated in a manner that is fair, neutral and nondiscriminatory.

The Qualified Attorney Lists will be approved by the Judges of the District Court and County Court at Law, hereinafter referred to as the Judges. The lists will be posted on the County Web site and made available in the offices of the Judges.

Attorneys will be appointed pursuant to this Plan on a rotation system. The Pre-Trial Services Officer(s) of the Harrison County Office of Community Supervision are designated to appoint attorneys from the Lists under the supervision of the Judges and pursuant to this Plan.

Applications for inclusion/re-certification on the list may be filed with each Court in which the attorney wishes to receive appointments for Harrison County. The applications will be considered within 30 days and ruled upon within 45 days, unless for good cause the time period for ruling must be lengthened.

II. Prompt Magistration

The law enforcement officer making the arrest and any officer who later has custody of an accused person shall ensure that the person is taken before a magistrate without unnecessary delay but not later than 48 hours after the person is arrested, for proceedings under Art. 15.17, Art. 14.06, Subsection (a), Tex.Code Crim.Proc.

The magistrate shall inform the accused of the right to request court appointed counsel, ascertain whether or not the accused wishes to request counsel at that time, and make a record of the accused's decision, and, if the accused requests counsel, the magistrate shall direct the jail officer to immediately notify the Pre-Trial Services Office. The Pre-Trial Services Officer(s) shall each working day visit the jail to determine if any defendants have requested counsel or need assistance, or wish to apply for pre-trial services. The Officer shall provide the inmates with a *Request for Court Appointed Counsel (Request)*, and assist in completing the *Request*. If not a working day, the jail staff shall provide the inmate with the Request, provide any assistance requested by the inmate in completing the request, and then transmit the request in person or by fax to the Pre-Trial Office or the appropriate court no later than 24 hours after the inmate requests appointment of counsel.

III. Indigence Determination Standards

The defendant's income from all sources, assets of the defendant, property in which the defendant owns an interest, outstanding obligations and reasonably necessary expenses of the defendant, number and age of the defendant's legal dependents, spousal income available to the defendant, and income of other persons living in the home of the defendant will be considered in determining the indigency of defendant. (In cases where the defendant has made bail, that fact will not be considered to deny the defendant otherwise entitled to court appointed counsel.) Resources of friends and relatives will not be considered except insofar as the friends or relatives live with or otherwise help defray the household or other expenses of the accused.

IV. Minimum Attorney Qualifications

1. Eligibility. The attorney shall be familiar with the practice and procedure of the criminal courts of Texas and shall be a member in good standing of the State Bar of Texas. Practice before a juvenile court shall be considered as experience in criminal litigation for purpose of these standards. Pro bono service of counsel shall also be considered as experience for purpose of these standards. The attorney shall have substantial contact, by residency or office location, for example, with Harrison County.

2. Compliance with Ethical Standards. All attorneys shall comply with the Canons Of Ethics and with the Lawyer's Creed and shall require that all investigators, experts and others working for or under the direction of the attorney shall also comply with all appropriate ethical standards.

3. Evidentiary Matters. The attorney shall be familiar with the Texas Rules of Evidence and shall have knowledge of the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence.

4. Co-Counsel. If the Court appoints co-counsel for any non-death penalty offense, it shall be at the discretion of the Court as to the qualification of counsel.

5. Continuing Education. To maintain annual certification, successful completion of a minimum of (8) hours of training in State Bar of Texas approved training in criminal law, evidence or trial practice. This is an annual calendar year requirement with reporting each January by the presentation of a re-certification affidavit presented prior to January 31 of each year. A failure to present the affidavit shall cause an attorney to be subject to removal from the lists of attorneys eligible for appointment.

6. Re-Certification: An attorney shall file a new application between January 1 and January 31 of each year to remain on the list(s).

7. Removal from List: A judge may remove an attorney from consideration for appointments if the attorney intentionally or repeatedly does not fulfill the duties required by law, Attorney's Creed, Canons, local rules, or the provisions of this plan. An attorney removed from the list(s) will be given notice and the reasons for the removal.

Qualifications for Specific Lists:

1. Capital Offenses.

In order to serve as lead counsel in a capital offense where the State of Texas is seeking a death sentence, an attorney must meet the following:

1. Exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;
2. Have (5) years experience in criminal litigation of serious felony matters and experience in at least one capital case; and
3. Have tried to verdict as lead defense counsel a significant number of felony cases before a jury, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;
4. Have trial experience in the use of and challenges to health or forensic expert witnesses and investigating and presenting mitigating evidence at the penalty phase of a death penalty trial.
5. Have participated in continuing legal education relating to death penalty criminal defense within the previous year, and shall have completed in addition to the minimum continuing legal education requirements of the State Bar of Texas, a minimum of twelve hours of such training over the previous two year period.

The attorney appointed as second chair shall have at least five years experience in representing individuals charged with felony matters and must have completed a minimum of eight hours of continuing legal education courses or other training related to criminal defense in death penalty cases over the previous two year period. Counsel shall have tried to verdict at least five felonies.

Appointment of attorneys in capital cases shall be as further provided in the *Standards for Appointment of Counsel in Death Penalty Cases Promulgated Pursuant to Art. 26.05 C.C.P.* as promulgated by the First Administrative Judicial Region. A copy of same is attached hereto.

2. All other felonies and misdemeanors, including revocations of probation:

In order to be eligible for appointment an attorney must:

1. Have (1) year experience in criminal litigation.
2. Have demonstrated to the Court the ability to investigate, prepare, and present a case to the court or jury .
3. Have demonstrated to the court the ability to timely prepare for trial and appear in Harrison County Courts.
4. Due to the criminal caseloads and jail population of Harrison County, the fact that there are only two trial courts in

Harrison County; the lack of visiting judges to sit for additional weeks of trial other than the two criminal weeks each month; the lawyers who ask to be placed on the Harrison County Qualified List must be available to prepare and try cases on a timely basis. Lawyers whose caseloads include indigent or criminal representation in multiple counties, which result in repeated requests for continuances , failures to appear or inability to timely investigate, prepare and dispose of cases will not be considered as qualified for the Harrison County List. Attorneys who, after they are placed on the Harrison County List, but due to the caseloads can no longer meet this criteria should ask to be removed or will be removed from the list.

3. Appellate Counsel and Writ Counsel

In order to serve as appellate counsel an attorney shall:

1. Have (3) years of experience in criminal litigation;
2. Have tried at least two pleas of not guilty before a jury; and
3. Have filed a brief and/or argued at least one case before the Courts of Appeal of Texas, the Texas Supreme Court, the Texas Court of Criminal Appeals, Fifth Circuit Court of Appeals or the United States Supreme Court.

Effect of Criminal Law Specialization

An attorney who has received his or her specialization in criminal law is qualified to serve on any capital felony where the State is not seeking the death penalty and for all other grades of felony and misdemeanor offenses.

RESPONSIBILITIES OF COURT APPOINTED COUNSEL

Appointed counsel shall contact the client not later than the end of the first working day after appointment and to also interview in person the client within 3 days of the appointment.

Court appointed counsel should be available to receive communications by telephone, answering service, pager, or voice mail from 8:00 am to 5:00 PM on workdays. Counsel will also maintain a FAX for receiving notices, motions, appointments, etc. from the Court 24 hours a day, 7 days a week. Difficulty communicating with counsel by court or court staff or clients will be considered as grounds for removing the counsel from the approved list. If counsel has no fulltime office staff, counsel will also provide a mobile cell phone number.

Counsel shall comply and insure that investigators and experts employed by counsel shall comply with all laws, rules, procedures and ethical provisions for providing reasonable assistance to counsel, including the Lawyer's Creed. Counsel is expected and shall timely investigate and prepare the case for trial and especially in the case of an incarcerated defendants, attempt to reach a plea agreement or request a setting on the trial docket. Counsel shall not wait to receive notice of a trial setting to begin attempting to prepare or resolve the case.

V. Prompt Appointments

The magistrate shall inform the accused of the right to request court appointed counsel, ascertain whether or not the accused wishes to request counsel at that time, and make a record of the accused 's decision, and, if the accused requests counsel, the magistrate shall direct the jail officer to immediately notify the Pre-Trial Services Office. The Pre-Trial Services Officer(s) shall each working day visit the jail to determine if any defendants have requested counsel or need assistance, or wish to apply for pre-trial services. The Officer shall provide the inmates with a *Request for Court Appointed Counsel (Request)*, and assist in completing the *Request*. If not a working day, the jail staff shall provide the inmate with the Request, provide any assistance requested by the inmate in completing the request, and then transmit the request in person or by fax to the Pre-Trial Office or the appropriate court no later than 24 hours after the inmate requests appointment of counsel.

If adversarial proceedings have not been initiated against the accused, and counsel shall be appointed immediately following the expiration of three working days after the date on which the *Request* was received by the Judge or the Pre-Trial Office.

If adversarial proceedings have been initiated against the accused, counsel shall be appointed on or before the 3rd working day after the date on which the Judge or Pre-Trial Office receives the *Request*.

WAIVERS OF RIGHT TO COUNSEL:

It is the intent of this Plan to comply with H.B. 1178.

Specifically, in any adversary proceeding that may result in punishment by confinement, the attorney representing the state may not initiate or encourage an attempt to obtain from a defendant who is not represented by counsel a waiver of the right to counsel or communicate with a defendant who has requested the appointment of counsel, unless the court or the court's authorized designee has denied the request and subsequent to the denial the defendant has been given a reasonable opportunity to retain and has failed to retain private counsel or waives or has waived the opportunity to retain private counsel.

The Court will not direct or encourage a defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given reasonable opportunity to request appointed counsel. If the defendant has requested counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or designee has denied the request and subsequent to the denial, the defendant has been given a reasonable opportunity to retain and has failed to retain counsel or waives or has waived the opportunity to retain counsel.

PRE TRIAL ATTORNEY SUPERVISION:

If an inmate has been appointed counsel and is subsequently released on bond, then the defendant will be referred to the Pre-Trial Services Office and placed on Attorney Fee Supervision.

A request for counsel from a defendant who is out on bond and has not had counsel previously appointed, will be referred to Pre -Trial Services for an interview to consider his eligibility for appointment of counsel and the terms and conditions of bond. If the defendant appears to be indigent, then a recommended pre-trial bond will be submitted to the Court for final approval and the next eligible attorney appointed. If the defendant appears to not be indigent, this fact will be reported to the Court and the Court will make the final determination.

VI. Fair Appointments

If Pre -Trial Services determines that the accused is entitled to appointment of counsel, the next qualified attorney from the appropriate Qualified Appointment List shall be appointed, unless a finding of good cause is made on the list 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. Once a capital indictment is returned, only a Capital Qualified List attorney approved to provide representation in a capital case will be appointed. If an attorney from the Qualified List has been representing the defendant, and is not qualified on the Capital Qualified List, that attorney must immediately file a Motion to Withdraw and obtain a hearing on said motion. At or before arraignment, if the State has not filed a Notice that the State does not seek the death penalty, then Second Chair counsel shall be appointed.

A copy of the appointment shall be immediately faxed or emailed to the appointed attorney before the end of the business day on which the attorney was appointed.

VII. Fee and Expenses

The following schedule is adopted pursuant to Art. 26.05, Texas Code of Criminal Procedure, with the intent to provide for reasonable compensation to court appointed counsel for time spent performing the reasonable and necessary services in representing the client, and with the intent to take into consideration the time and labor required, complexity of the case, experience and ability of the appointed counsel, and the reasonable and necessary overhead costs of the attorneys.

Not less than \$50.00 per hour nor more than \$100.00 per hour depending on the grade of offense, nature and complexity of the case, and whether the death penalty in a capital case is sought. In all cases except those in which a

presumptively flat fee for a guilty plea is requested. Counsel may request, upon the entry of a guilty plea, a flat fee as set forth below. If multiple pleas are entered in both the County Court at Law and the District Court or in either court, counsel may request a flat fee in each court for one case, based on the highest degree offense, or submit a fee request on an hourly basis for work done on all cases. Fees shall be requested from the Court in which the respective plea was entered, but in no event shall the attorney charge twice for the same hours expended.

If a case results in a dismissal, counsel shall submit a fee based on the number of hours expended.

Based on the foregoing considerations, the judges find the following fees to be presumptively reasonable:

A. FEE SCHEDULE

1. FELONIES AND STATE JAIL OFFENSES:

Guilty plea **\$500.00**

2. MISDEMEANORS AND REVOCATIONS

Guilty plea **\$400.00**

****ENHANCEMENTS:** Cases enhanced to a higher punishment level shall be treated as the higher level case.

3. REVOCATIONS OF PROBATION **\$400.00**

4. APPEALS **\$75.00 per hour**

5. WRITS, OTHER MATTERS, AND HOURLY RATES FOR FEES ABOVE THE PRESUMPTIVELY REASONABLE FEES ABOVE:

\$50.00 - \$100.00 per hour, depending on the nature of the case

6. CAPITAL CASES WHERE DEATH PENALTY SOUGHT:

Lead Counsel in a capital case shall be entitled to a minimum of : **\$90.00 per hour**

Co-Counsel shall be entitled to: **\$80.00 per hour**

B. INVESTIGATION EXPENSES AND EXPERT WITNESS FEES:

The defendant has the right to the proper investigation of his case and for the appointment of expert witnesses when necessary for the defense of his case. Investigation expenses will be compensated at \$20 to \$40 per hour in the discretion of the court and considering the nature of the offense and the nature of the services provided. Travel time from the investigator's office to the courthouse, jail and lawyer's office is not compensated. Mental health, ballistics, forensics, fingerprint, DNA experts necessary for the defense of the accused shall be compensated based on the usual and normal charges for such experts in the Administrative Judicial District.

As provided by Art. 26.05(d), counsel in a non-capital case shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health experts and other experts. Expenses incurred shall be as provided in Art. 26.052(f), (g), and (h).

Incurring frivolous, unnecessary or improper investigation expenses could result in the removal of the attorney from the list of qualified attorneys.

C. REQUESTS FOR PAYMENT OF ATTORNEY FEES AND EXPENSES

Each attorney shall submit a request for payment:

1. On the date of the disposition of the case by a plea or bench trial; or
2. Within 15 days of the date of the verdict in a jury trial; or
3. Within 15 days of the date the mandate being returned in an appeal.
4. Or within 15 days of the defendant's release on bond, or by way of writ of habeas corpus or other order of the Court.

Bills for indigent attorney fees or expenses not timely filed as above will be considered waived, the services being performed pro bono, and said request shall not later be paid.

Requests for amounts greater than the presumptively reasonable amounts set forth above or for services rendered in a trial to the court or jury shall be verified and include a detailed statement of the nature of the services performed, the date of such performance, and the actual time spent on each such date and performing each such service.

If the request is disapproved, the attorney may, as provided by law, file a written appeal to the presiding judge of the Administrative Region.

D. PROCEDURES TO REDUCE EXPENSE OF DEFENSE AND LITIGATION:

The judges hereby adopt a Standard Discovery Order available at www.co.harrison.tx.us.

Ultimately, fees incurred are also dependent on the prosecution's prompt and efficient preparation and trial of the cases. Attorney fees and investigation expenses can be mitigated greatly by the prompt decision as to charges brought and penalties sought, and by the prompt trial of cases.

Cases will not be delayed because charges in other courts or federal jurisdictions are pending. The State shall secure the presence of institutionalized defendants for prompt trial of their cases to whatever extent possible by law.

The Courts shall continue to give priority settings to criminal cases.

Hereby adopted by the unanimous vote of the below-signed judges and effective beginning December 1, 2009.

Signed and ORDERED this the 30st day of November 30, 2009.

DISTRICT JUDGE

COUNTY-COURT-AT-LAW JUDGE

WILLIAM TODD HUGHEY
WILLIAM TODD HUGHEY

JIM AMMERMAN, II
JIM AMMERMAN, II

STATE OF TEXAS

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FIRST ADMINISTRATIVE JUDICIAL REGION

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STANDARDS FOR APPOINTMENT OF COUNSEL IN DEATH PENALTY

CASES PROMULGATED PURSUANT TO ART.26.052 C.C.P.

On the 4th day of November, 2003, the local selection committee, appointed by the Presiding Judge of the First Administrative Judicial Region of Texas pursuant to Article 26.052 of the Code of Criminal Procedure, conducted a meeting to consider the standards for the qualification of attorneys to be appointed to represent indigent defendants in death penalty cases. The committee adopted minimum standards and qualifications for attorneys to be appointed to death penalty cases in the First Administrative Judicial Region. Those standards are as follows:

- At least two attorneys shall be appointed. One designated as first chair, or lead attorney, the other as second chair;
- The first and second chair attorneys must be members of the State Bar of Texas;
- The first chair attorney must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases. The first chair's commitment and proficiency must include at least five years experience in litigation of serious felony matters and experience in at least one capital case;
- The first chair attorney must have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as first or second degree felonies, or capital felonies;
- The first chair attorney must have trial experience in the use of and challenge to mental health or forensic expert witnesses, and investigating and presenting mitigating evidence at the penalty stage of death penalty trial; and
- The first chair attorney must have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases within the previous year and must have completed a minimum of twelve hours of such training over the previous two year period.
- The second chair attorney must have at least two years experience in representing individuals charged with felony matters; and
- The second chair attorney must have completed a minimum of eight hours of continuing legal education courses or other training relating to criminal defense in death penalty cases over the previous two year period.

District Judges trying capital cases in the First Administrative Region shall adopt a list of names of attorneys within their judicial district who meet the standards set forth herein and are eligible for appointment as lead attorney in death penalty cases. A copy of the list of eligible attorneys along with the qualifications of each attorney named on the list shall be forwarded to the Presiding Judge of the First Administrative Region for review by the local selection committee and inclusion on the master list of attorneys eligible for appointment as lead attorney in death penalty cases in the First Administrative Judicial Region. The master list of attorneys qualified for appointment to death penalty cases in the First Administrative Judicial Region and this order setting standards shall be prominently posted in each district clerk's office in the Administrative Region. The list of attorneys eligible for appointment may be amended annually by the judges trying capital cases forwarding additions or deletions to the list of eligible attorneys in their judicial district to the Presiding Judge of the Region for review by the local selection committee. The Presiding Judge of the Region shall determine the date any additions or deletions to the list are to be submitted. Counties with more than one district court trying capital cases may comply with this order under authority of the Local Administrative Judge or his designated judge, or the presiding judge of the criminal courts trying capital cases.

The judge of the court in which a capital felony case is filed shall appoint counsel to represent an indigent defendant as soon as practicable after charges are filed. At least one of the attorneys appointed must be from the master list of attorneys eligible for appointment to death penalty cases, unless the State gives notice in writing that the State will not seek the death penalty. The judge trying the case shall compensate appointed counsel in accordance with the fee schedule adopted in that jurisdiction.

Not later than the second anniversary of the date an attorney is placed on the master list of qualified attorneys for the Administrative Region, and each year following the second anniversary, each attorney named on the list must present proof to the local selection committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas and has completed the required hours of training relating to the defense of death penalty cases. The name of any attorney failing to provide proof of completion of

the continuing legal education requirements to the local selection committee shall be removed from the master list of eligible attorneys. The Presiding Judge of the Region shall determine the date CLE reports are to be submitted. The local selection committee shall meet annually at a time set by the Presiding Judge of the First Administrative Judicial Region to ensure that each attorney listed on the master list of eligible attorneys satisfies the requirements set forth in this order.

The district courts trying capital cases in the Region may, by separate plan adopted by the judges, require additional qualifications for an attorney to be appointed to a capital case in their jurisdiction. Any such plan shall be forwarded to the Presiding Judge of the Region upon its adoption. An attorney appointed as first chair in a capital case where death is sought must meet the minimum qualifications set forth in this plan.

Signed this 13th day of November, 2003.

John Ovard
JOHN OVARD, PRESIDING JUDGE
FIRST ADMINISTRATIVE JUDICIAL REGION